

No. 25-38

In the Supreme Court of the United States

SETH ADAM LILLY,
Petitioner,

v.

MELISSA ANN LILLY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE INDIANA COURT OF APPEALS

**APPENDIX TO BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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Twenty-sixth day of September, MMXXV

App-i

APPENDIX

TABLE OF CONTENTS

Appendix A

Brief of Appellant, Indiana Court of Appeals, *Seth Adam Lilly v. Melissa Ann Lilly*,
No. 24a-Dc-00510 (Jun. 26, 2024) App-1

Appendix B

Certified Docket Sheet, Vigo County Superior Court 2, *In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Mar. 5, 2024) App-30

Appendix C

Mediated Settlement Agreement, Vigo Superior Court, *In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Jan. 23, 2023) App-86

Appendix D

[Melissa Lilly's] Verified Petition for Rule to Show Cause and Petition for Attorney Fees, Vigo County Superior Court, *In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly*,

App-ii

No. 84D02-2206-DC-003750 (Aug. 28, 2023)	App-110
---	---------

Appendix E

[Seth Lilly's] Verified Petition for Rule to Show Cause and To Enforce Previous Order and Petition for Attorney Fees, Vigo County Superior Court, <i>In re: the Marriage of Melissa Ann Lilly and Seth Adam Lilly</i> , No. 84D02-2206-DC-003750 (Aug. 30, 2023)	App-113
---	---------

Appendix F

[Seth Lilly's] Response to [Melissa Lilly's] Verified Petition for Rule to Show Cause and Petition for Attorney Fees, Vigo County Superior Court, <i>In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly</i> , No. 84D02-2206-DC-003750 (Aug. 30, 2023)	App-117
--	---------

Appendix G

Order Appointing Commissioner, Vigo County Superior Court, <i>In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly</i> , No. 84D02-2206-DC-003750 (Sep. 1, 2023)	App-120
--	---------

App-iii

Appendix H

Order, Vigo County Superior Court, *In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Sep. 8, 2023) App-122

Appendix I

Motion to Correct Error or, In the Alternative, Motion to Reconsider, Vigo County Superior Court, *In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Oct. 8, 2023) App-162

Appendix J

Amended Motion to Correct Error Pursuant to Trial Rule 59 or, In the Alternative, Motion to Reconsider, Vigo County Superior Court, *In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Oct. 11, 2023) App-172

App-iv

Appendix K

Order on Motion to Clarify, Vigo County
Superior Court, *In re the Marriage of
Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Oct. 18, 2023) App-178

Appendix L

Order on Father's Motion to Correct Error,
Vigo County Superior Court, *In re the
Marriage of Melissa Ann Lilly and Seth
Adam Lilly*,
No. 84D02-2206-DC-003750
(Oct. 18, 2023) App-181

Appendix M

Order [limited grants to motions to
correct errors of both parties], Vigo
County Superior Court, *In re the
Marriage of Melissa Ann Lilly and Seth
Adam Lilly*,
No. 84D02-2206-DC-003750
(Feb. 2, 2023) App-184

Appendix N

Petition To Transfer, Indiana Court of
Appeals, *Seth Adam Lilly v. Melissa Ann
Lilly*,
No. 24a-Dc-00510 (Jun. 26, 2024) App-206

App-v

Appendix O

Email from John Claussen to Caitlin
Miller,
(July 31, 2023) App-225

App-vi

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App-1

Appendix A

[Filed: Jun. 26, 2024]

IN THE INDIANA COURT OF APPEALS
CAUSE NO. 24A-DC-00510

SETH ADAM LILLY,	)	Appeal from the Vigo
	)	Superior Court 2
Appellant/Respondent)	
Below,)	
	)	Trial Court Cause No.
and	)	84D02-2206-DC-
	)	003750
MELISSA ANN LILLY,)	
)	The Honorable
Appellee/Petitioner)	Lakshmi Reddy
Below,)	

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	[App-4]
STATEMENT OF ISSUES	[App-6]
STATEMENT OF THE CASE	[App-7]
STATEMENT OF FACTS	[App-9]
SUMMARY OF ARGUMENT	[App-11]
ARGUMENT	[App-12]
I. Standard of Review	[App-12]
II. The trial court abused its discretion when it granted Wife’s Petition for Rule to Show Cause and denied Husband’s Petition for Rule to Show Cause because the evidence clearly shows that Wife failed to comply with the Settlement Agreement for refinancing the Marial Residence before the agreed upon deadline	[App-13]
A. Wife unambiguously failed to obtain refinancing for the Marital Residence and remove Husband from the mortgage before the deadline	[App-16]
B. Husband requested that the Marital Residence be placed for sale by requesting that he purchase	

App-3

it [App-20]

III. Because Husband had not violated the terms of the Settlement Agreement and Wife had violated the terms of the Settlement Agreement, regarding the Marital Residence, the trial court's award of attorney's fees to Wife must be reversed [App-23]

CONCLUSION [App-27]

WORD COUNT CERTIFICATE [App-28]

CERTIFICATE OF SERVICE [App-28]

TABLE OF AUTHORITIES

Cases

<i>Bailey v. Mann</i> , 895 N.E.2d 1215, 1217 (Ind. 2008)	[App-12]
<i>Blakley v. Currence</i> , 172 Ind. App. 668, 361 N.E.2d 921, 923 (Ind. Ct. App. 1977)	[App-19, App-20]
<i>Conwell v. Gray Loon Outdoor Mktg. Grp., Inc.</i> , 906 N.E.2d 805, 813 (Ind. 2009)	[App-14]
<i>Dvorak v. Christ</i> , 692 N.E.2d 920, 922 (Ind. Ct. App. 1998), <i>trans. Denied</i>	[App-19]
<i>Fischer v. Heymann</i> , 943 N.E.2d 896, 900 (Ind. Ct. App. 2011), <i>trans. denied</i>	[App-13]
<i>Four Seasons Mfg., Inc. v. 1001 Coliseum, LLC</i> , 870 N.E.2d 494, 501 (Ind. Ct. App. 2007)	[App-14]
<i>Francies v. Francies</i> , 759 N.E.2d 1106, 1119 (Ind. Ct. App. 2001), <i>trans. denied</i>	[App-24]
<i>John M. Abbott, LLC v. Lake City Bank</i> , 14 N.E.3d 53, 56 (Ind. Ct. App. 2014)	[App-13]
<i>JPMorgan Chase Bank, N.A. v. Brown</i> , 886 N.E.2d 617, 620 (Ind. Ct. App. 2008)	[App-24]
<i>McLinden v. Coco</i> , 765 N.E.2d 606, 613 (Ind. Ct. App. 2002)	[App-14]

App-5

Mead Johnson & Co. v. Oppenheimer, 458 N.E.2d 668, 670 (Ind. Ct. App. 1984) [App-14, App-17, App-22]

Shorter v. Shorter, 851 N.E.2d 378, 382-83 (Ind. Ct. App. 2006) [App-12-App-13]

Stanke v. Swickard, 43 N.E.3d 245, 250 (Ind. Ct. App. 2015) [App-27]

Sutton v. Sutton, 773 N.E.2d 289, 297 (Ind. Ct. App. 2002) [App-24]

Van Wieren v. Van Wieren, 858 N.E.2d 216, 224 (Ind. Ct. App. 2006) [App-24]

Wenning v. Calhoun, 827 N.E.2d 627, 629 (Ind. Ct. App. 2005) [App-14]

Other Authorities

Amer. Heritage Dictionary (5th Ed. 2022) [App-16]

Restatement (Second) of Contracts § 33(2) (1979) [App-14]

App-6

STATEMENT OF ISSUES

- I. Whether the trial court abused its discretion by denying Appellant's Verified Petition for Rule to Show Cause and to Enforce Previous Order and Petition for Attorney Fees.
- II. Whether the trial court abused its discretion in granting Appellee's Verified Petition for Rule to Show Cause and Petition for Attorney Fees.
- III. Whether the trial court abused its discretion in its calculation of attorney's fees awarded to Appellee.
- IV. Whether the trial court abused its discretion by denying Appellant Seth Adam Lilly's Motion to Correct Error.

STATEMENT OF THE CASE

On June 21, 2022, Appellee Melissa Ann Lilly (hereinafter “Wife”) filed her Petition for Dissolution of Marriage with Children. *Appellant’s App. Vol. 2, p. 3.*

On January 23, 2023, the trial court issued the parties’ Mediated Settlement Agreement. *Appellant’s App. Vol. 2, pp. 24-35.*

On August 28, 2023, Wife filed her Verified Petition for Rule to Show Cause and Petition for Attorney Fees (hereinafter Wife’s “Petition for Rule to Show Cause”). *Appellant’s App. Vol. 2, pp. 36-37.*

On August 30, 2023, Appellant Seth Adam Lilly (hereinafter “Husband”) filed his Response to Petitioner’s Verified Petition for Rule to Show Cause and Petition for Attorney Fees and his own Verified Petition for Rule to Show Cause and to Enforce Previous Order and Petition for Attorney Fees (hereinafter Husband’s “Petition for Rule to Show Cause”). *Appellant’s App. Vol. 2, pp. 38-41.*

Hearings were held on August 28, 2023 and August 31, 2023. *Appellant’s App. Vol. 2, pp. 18-19.*

On September 1, 2023, the trial court issued its Order Appointing Commissioner. *Appellant’s App. Vol. 2, p. 42.*

On September 8, 2023, the trial court issued its Order from the August 28th and 31st, 2023 hearings. *Appellant’s App. Vol. 2, pp. 43-60.*

On October 8, 2023, Husband filed his Motion to Correct Error or, in the Alternative, Motion to Reconsider. *Appellant’s App. Vol. 2, pp. 61-65.*

On October 10, 2023, Husband filed his Motion to Clarify. *Appellant’s App. Vol. 2, p. 20.*

App-8

On October 11, 2023, Husband filed his Amended Motion to Correct Error Pursuant to Trial Rule 59 or, in the Alternative, Motion to Reconsider (hereinafter Husband's "Motion to Correct Error"). *Appellant's App. Vol. 2, pp. 66-69.*

On October 18, 2023, the trial court issued its Order on Motion to Clarify and Order on Husband's Motion to Correct Error. *Appellant's App. Vol. 2, pp. 70-73.*

A hearing was held on Husband's Motion to Correct Error on January 30, 2024. *Appellant's App. Vol. 2, pp. 21-22.*

On February 2, 2024, the trial court issued its Order from the January 30, 2024 hearing. *Appellant's App. Vol. 2, pp. 74-81.*

On February 29, 2024, Husband filed his Notice of Appeal.

Husband now timely files his Appellant's Brief.

STATEMENT OF FACTS

The parties' marriage was dissolved on January 24, 2023. *Appellant's App. Vol. 2, p. 8.* The parties' rights to marital property were resolved by their Mediated Settlement Agreement (hereinafter the parties' "Settlement Agreement"). *Appellant's App. Vol. 2, pp. 24-35.* The parties entered their Settlement Agreement on January 23, 2023. *Id.*

The parties owned real property located at 239 N. Crews Place, West Terre Haute, IN 47885 (hereinafter the "Marital Residence"), which consisted of a house and other improvements on four (4) parcels of land. *Appellant's App. Vol. 2, p. 25.* Under the Settlement Agreement, Wife was awarded the Marital Residence. *Id.* Wife was obligated to assume the mortgage loan for the Marital Residence or obtain refinancing to remove Husband from the mortgage loan within six (6) months. *Id.* In the event Wife was unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of the agreement, then upon Husband's request, the Marital Residence would immediately be placed for sale and sold in order to remove Husband from the mortgage and note obligations. *Id.* If the Marital Residence was to be sold, Husband shall have the right of first refusal to purchase the Marital Residence at fair market value. If Husband were then to not purchase the Marital Residence, he was to execute a Quit Claim Deed relinquishing all interest that he may have in conjunction with the refinancing or loan assumption or sale. *Id.* The Quit Claim Deed was to be prepared by Wife's attorney. *Id.* Husband was to cooperate

with any attempts to refinance, assume, or sell the Marital Residence. *Id.*

Under the terms of the Settlement Agreement, the deadline for Wife to assume the mortgage loan for the Marital Residence or obtain refinancing was July 24, 2023. Wife did not submit her application for refinancing until Friday, July 21, 2023. *Ex. Vol. 1, p. 229.* Wife did not assume the mortgage loan or obtain refinancing within six (6) months of the Settlement Agreement. On July 31, 2023, Husband's counsel emailed Wife's counsel, stating the Husband "would like to purchase the Marital Residence for the appraisal amount." *Ex. Vol. 1, p. 65.*

On August 28, 2023, Wife filed her Petition for Rule to Show Cause stating that she had obtained the necessary financing within six (6) months of the Settlement Agreement, but that Husband refused to execute the documents required to remove himself from the mortgage. *Appellant's App. Vol. 2, p. 36.* Two days later, Husband responded to Wife's Petition for Rule to Show Cause and filed his own Petition for Rule to Show Cause stating that Wife had failed to either assume the mortgage loan or obtain refinancing within six (6) months of the Settlement Agreement and requested that the trial court enforce the agreement that the Marital Residence be sold with Husband having the right of first refusal. *Appellant's App. Vol. 2, p. 38-41.*

On September 1, 2023, the trial court issued its Order Appointing Commissioner. *Appellant's App. Vol. 2, p. 42.* The trial court appointed attorney Jon Spurr (hereinafter "Mr. Spurr") to serve as a commissioner for purposes of signing any documents on behalf of Husband "for the sole purpose of

allowing [Wife] to refinance the marital residence[.]” *Appellant’s App. Vol. 2, p. 42*. As noted therein, the closing was to take place on October 1, 2023. *Id.* Husband was ordered to pay any fees charged by Mr. Spurr. *Id.*

On September 8, 2023, the trial court issued its Order from the August 28th and 31st, 2023 hearings. *Appellant’s App. Vol. 2, pp. 43-60*. In relevant part, the trial court granted Wife’s Petition for Rule to Show Cause and ordered that she proceed with the refinancing of the Marital Property. *Appellant’s App. Vol. 2, p. 45*.

In his Motion to Correct Error, Husband requested, in relevant part, that the trial court correct its error regarding the Marital Residence and order that the Marital Residence be sold to Husband on his option to purchase it at fair market value. *Appellant’s App. Vol. 2, pp. 63, 68*.

The trial court denied Husband’s Motion to Correct Error. *Appellant’s App. Vol. 2, p. 73*. The trial court further ordered that Husband pay attorney fees in the amount of \$23,053.23, some of which was awarded in connection with the parties’ respective petitions for rule to show cause. *Appellant’s App. Vol. 2, p. 78*.

SUMMARY OF ARGUMENT

The trial court abused its discretion when it granted Wife’s Petition for Rule to Show Cause and denied Husband’s Petition for Rule to Show Cause. The Settlement Agreement unambiguously states that Wife had six (6) months to either assume the mortgage loan or obtain refinancing within six (6)

App-12

months of the agreement. That deadline was July 24, 2024. The facts clearly show that Wife had failed to assume the loan or obtain refinancing and remove Husband from the mortgage loan before the six (6) month deadline. Although Wife may have filed an application for refinancing, the Settlement Agreement does not state that Wife had six (6) months to apply for refinancing. Instead, the Settlement Agreement unambiguously required that Wife “obtain” refinancing within six (6) months. Wife failed to do so through no fault of Husband. Husband, through counsel, then requested to purchase the Marital Property from Wife. Therefore, Wife was obligated to place the Marital Residence for sale. Wife failed to place the Marital Property on the market and thus provide Husband the opportunity to exercise his right to purchase the Marital Property in violation of the Settlement Agreement.

ARGUMENT

I. Standard of Review

The dispositive issue here is whether the trial court erred when interpreting the terms of the Settlement Agreement regarding the parties’ rights to the Marital Residence. When dissolving a marriage, the parties are free to craft an agreement providing for the disposition of property, amongst other issues. *Bailey v. Mann*, 895 N.E.2d 1215, 1217 (Ind. 2008). Settlement agreements become binding contracts when incorporated into the dissolution decree and are interpreted according to the general rules for contract construction. *Id.* (Citing *Shorter v.*

Shorter, 851 N.E.2d 378, 382-83 (Ind. Ct. App. 2006)). The Court reviews the contract as a whole, attempting to ascertain the parties' intent and making every attempt to construe the contract's language "so as not to render any words, phrases, or terms ineffective or meaningless." *John M. Abbott, LLC v. Lake City Bank*, 14 N.E.3d 53, 56 (Ind. Ct. App. 2014) (quoting *Fischer v. Heymann*, 943 N.E.2d 896, 900 (Ind. Ct. App. 2011), *trans. denied.*) Where the terms of a contract are clear and unambiguous, the Court applies the plain and ordinary meaning of the terms and enforces the contract according to its terms. *John M. Abbott, LLC*, 14 N.E.3d at 56. Extrinsic evidence cannot be used to create an ambiguity. *Id.* Interpretation of a settlement agreement, as with any other contract, presents a question of law and is review *de novo*. *Id.*

II. The trial court abused its discretion when it granted Wife's Petition for Rule to Show Cause and denied Husband's Petition for Rule to Show Cause because the evidence clearly shows that Wife failed to comply with the Settlement Agreement for refinancing the Marial Residence before the agreed upon deadline.

As stated above, the present dispute arose from the interpretation of the Settlement Agreement regarding the parties' respective rights to the Marital Residence. Here, the language regarding the parties' rights to the Marital Property is unambiguous. The unambiguous language of a

contract, such as the Settlement Agreement, is conclusive and binding on the parties and the court, and the parties' intent is determined from the four corners of the documents. *Four Seasons Mfg., Inc. v. 1001 Coliseum, LLC*, 870 N.E.2d 494, 501 (Ind. Ct. App. 2007). A court cannot make a contract for the parties, nor is a court at liberty to revise a contract, or supply omitted terms while professing to construe it. *Mead Johnson & Co. v. Oppenheimer*, 458 N.E.2d 668, 670 (Ind. Ct. App. 1984). All that is required to render a contract enforceable is reasonable certainty in the terms and conditions of the promises made, including by whom and to whom; absolute certainty in all terms is not required. *Conwell v. Gray Loon Outdoor Mktg. Grp., Inc.*, 906 N.E.2d 805, 813 (Ind. 2009). Only essential terms need be included to render a contract enforceable. *Id.* A "contract must 'provide a basis for determining the existence of a breach and for giving an appropriate remedy.'" *Wenning v. Calhoun*, 827 N.E.2d 627, 629 (Ind. Ct. App. 2005) (citing *McLinden v. Coco*, 765 N.E.2d 606, 613 (Ind. Ct. App. 2002) (quoting Restatement (Second) of Contracts § 33(2) (1979))).

Here, in relevant part, the Settlement Agreement states:

The parties are joint owners of the [Marital Residence]. Wife shall be awarded said real property and shall be solely responsible for, pay and keep current, any and all indebtedness thereon, holding Husband harmless therefrom. Wife shall assume the mortgage loan or

App-15

obtain refinancing to remove Husband from the mortgage loan within six (6) months. In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband's request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value. If Husband does not purchase the property, then he shall execute a Quit Claim Deed relinquishing all interest that he may have in conjunction with the refinancing or loan assumption or sale. Quit Claim Deed to be prepared by Wife's attorney. Husband shall cooperate with any attempts to refinance, assume or sell the marital residence.

Appellant's App. Vol. 2, p. 25. The trial court committed reversible error when ruling on the Marital Residence issues because Wife failed to obtain refinancing and remove Husband from the mortgage before the deadline and refused to sell the

App-16

Marital Residence after Husband requested to purchase it.

- A. Wife unambiguously failed to obtain refinancing for the Marital Residence and remove Husband from the mortgage before the deadline.

The Settlement Agreement provides “Wife shall assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within six (6) months.” *Appellant’s App. Vol. 2, p. 24*. The words “obtain” and “within six (6) months” created a condition that Wife was obligated to satisfy in order to retain possession of the Marital Residence. In other words, Wife’s possession of the Marital Residence was contingent upon her assuming the mortgage loan or obtaining refinancing to remove Husband from the mortgage loan by July 24, 2023. If Wife failed to satisfy this condition by the agreed upon deadline, then, upon Husband’s request, the Marital Residence was to be placed for sale.

The language of this agreement is clear and unambiguous. The common meaning of the word “obtain” is “to succeed in gaining possession of as the result of planning or endeavor” or “acquire.” See *Obtain, Amer. Heritage Dictionary* (5th Ed. 2022). The common meaning of the preposition “within” is “not exceeding the limits or extent of in distance or time” or “not exceeding the fixed limits of.” See *Within, Amer. Heritage Dictionary* (5th Ed. 2022). As such, the plain language of the Settlement Agreement required that Wife succeed in acquiring refinancing of the Marital Residence and thereby

App-17

remove Husband from the mortgage loan within 6 months. If Wife failed to obtain, or acquire, refinancing for the Marital Residence, then she failed to satisfy the condition for her to continue possessing the Marital Residence. The plain language of this condition did not require that Wife simply apply for refinancing before that date. To interpret the Settlement Agreement otherwise would require the changing of the word “obtain” to “apply” and the removal of the phrase “remove Husband from the mortgage loan” since that can only be accomplished upon the final completion of refinancing. The trial court was not at liberty to revise the plain language of the Settlement Agreement. *Mead Johnson & Co.*, 458 N.E.2d at 670.

Under the plain language of the Settlement Agreement, Wife did not assume the mortgage loan or obtain refinancing by July 24, 2023, nor did she request an enlargement of time to do so. Wife did not submit her application for refinancing until July 21, 2023. *Ex. Vol. 1, p. 229*. Wife’s loan officer explained to wife’s counsel on August 16, 2023 the following steps for completing the refinancing process:

The first step in any loan process is to get approved/eligible with the automated underwriting system based on an applicant’s application. We received [Wife’s] approved/eligible back on 7/21/2023[.] The next step is for underwriting to verify that a borrower’s income/application documents match with the

App-18

approved/eligible data which has also been completed. We are just waiting to get the flood insurance on the property approved and homeowner's insurance updated with the new refinance loan details so underwriting can finish up and get the file into our closing department.

Ex. Vol. 3, p. 64. This message confirms that the mortgage company had not finalized Wife's refinance loan by August 16, 2023, which was 24 days after the deadline. This evidence undisputedly shows that Wife had not obtained final approval for her refinance loan before the deadline. This message further demonstrates that any additional steps that needed to be taken to finalize the refinance loan (i.e., flood and homeowner's insurance) had no relation to any actions or inactions of Husband. Again, this message was sent over three weeks after the deadline had already passed. Notably, Wife did not file her Petition for Rule to Show Cause until after the loan officer sent this message. *Appellant's App. Vol. 2, p. 36.* Under the terms of the Settlement Agreement, Wife had not "obtained" refinancing for the Marital Residence and removed Husband from the mortgage loan by the deadline for her to do so.

The trial court even acknowledged that Wife had not finalized her refinancing. In its Order Appointing Commissioner, issued over a month after the deadline, the trial court states that the commissioner was appointed "for the sole purposes of allowing [Wife] to refinance the [Marital Residence.]"

Appellant's App. Vol. 2, p. 42. Similarly in its September 8th Order, the trial court ordered that “[Wife] proceed in refinancing so that [Husband’s] name can be removed.” *Appellant's App. Vol. 2, p. 45.* The implication here being that Wife had clearly *not* already refinanced the Marital Residence.

The Indiana Court of Appeals has made previous decisions which demonstrate the clear and unambiguous nature of a party’s obligation to obtain financing related to an agreement for real property. In each of these cases, the Court required final loan approval in order for a party to satisfy a contract.

In *Dvorak v. Christ*, 692 N.E.2d 920, 922 (Ind. Ct. App. 1998), *trans. denied*, the parties entered a purchase agreement which contained the requirement that the buyer obtain a mortgage loan for \$451,600 by March 29, 1995. On March 29th, the buyer represented to the seller that there had been a verbal loan commitment by a bank for an unspecified amount. *Dvorak*, 692 N.E.2d at 922-23. Although the bank had notified the buyer that it had approved a loan in the amount of \$100,000, it had not provided him with commitment to the full \$451,600 by the deadline and the parties had not agreed to extend to deadline for the buyer to obtain the specified financing. *Id.* at 923. Thus, the Court of Appeals concluded that the buyer failed to obtain the mortgage by the deadline as contemplated by the purchase agreement. *Id.* at 924.

In *Blakley v. Currence*, 172 Ind. App. 668, 361 N.E.2d 921, 923 (Ind. Ct. App. 1977), the buyers and sellers entered into a land sale contract, which provided that the sale was contingent upon the buyers acquiring loan approval for the payment of

the purchase price. Specifically, the agreement included that the buyers would pay \$8,000 in cash with the remainder of the purchase price being “subject to loan approval.” *Blakley*, 172 Ind. App. at 669. The Court of Appeals found that it was obvious that the buyers never acquired loan approval from a lending institution. *Id.* at 671. The Court reasoned that “the conditional clause, ‘subject to loan approval,’ required the existence of a final loan approval”, which the buyers failed to obtain *Id.* at 672 (emphasis added.) Therefore, the buyers failed to satisfy the requirements of the agreement.

Here, Wife failed to satisfy the conditional clause for her to retain possession of the Marital Residence as set forth in the Settlement Agreement since she failed to obtain refinancing by the deadline. The record was clear that Wife had not obtained final approval for her refinance loan and Husband had not been removed from the mortgage loan. Therefore, Husband had the right to request that the Marital Residence be sold as of July 24, 2023.

B. Husband requested that the Marital Residence be placed for sale by requesting that he purchase it.

The trial court’s finding that there was no evidence that Husband ever requested that the house be placed for sale (*Appellant’s App. Vol. 2, p. 45*) is not supported by the record. As established above, Wife failed to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months of the Settlement Agreement. This

App-21

triggered the chain of events which compelled the Marital Residence to be placed for sale.

The trial court concluded that Husband “only had a right to purchase after the [Marital Residence] was placed for sale and then he had a right of first refusal.” *Appellant’s App. Vol. 2, p. 45*. This is a misreading of the Settlement Agreement, which does not restrict Husband’s ability to purchase the Marital Residence to exercising a right of first refusal. The Settlement Agreement reads, in relevant part:

In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband’s request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value.

Appellant’s App. Vol. 2, p. 25. The plain reading is that the Marital Residence was to be placed for sale *and* Husband had a right of first refusal. None of this language precluded Husband from purchasing the Marital Residence without first having to wait for third party offer and then exercise his right of first refusal. The operative language here is simply that

the Marital Residence was to be placed immediately for sale and sold. The trial court's interpretation of the Settlement Agreement improperly added terms to the Settlement Agreement that Husband could only purchase the Marital Residence through exercising his right of first refusal. *Mead Johnson & Co.*, 458 N.E.2d at 670 (A court cannot make a contract for the parties, nor is a court at liberty to revise a contract, or supply omitted terms while professing to construe it.)

The record shows that Husband unambiguously expressed his wish to purchase the Marital Residence. On July 31, 2023, Husband's counsel emailed Wife's counsel, stating that, "[Husband] would like to purchase the marital residence for the appraisal amount." *Ex. Vol. 1, p. 65*. At that time, Wife had not obtained refinancing, and she was now beyond the deadline to do so. Husband's request to "purchase" the Marital Residence clearly expressed his request that the property be placed for sale, since he would by only be able to purchase it, either outright or after exercising his right of first refusal, if it was first placed for sale. Put differently, Husband's request to purchase the Marital Property without the property consequently being placed for sale would lead to an absurd result. Therefore, the trial court erred when it concluded that Husband had never requested that the house be placed for sale.

Therefore, Husband properly requested that the Marital Residence be placed for sale according to the Settlement Agreement. Consequently, Wife was obligated to immediately place the Marital Residence for sale with Husband having the right to purchase

the property either outright or after exercising his right of first refusal.

III. Because Husband had not violated the terms of the Settlement Agreement and Wife had violated the terms of the Settlement Agreement, regarding the Marital Residence, the trial court's award of attorney's fees to Wife must be reversed.

The trial court granted Wife's Petition for Rule to Show Cause and ordered that Husband pay attorney fees in a total amount of \$23,053.23. *Appellant's App. Vol. 2, p. 78*. The trial court does not delineate what amount of these fees was awarded in connection with the parties' competing Petitions for Rule to Show Cause but specifies that the attorney's fees Mother incurred after the September Hearing¹ are not included. *Id.* Regardless, the trial court awarded Wife attorney fees, at least in part, in connection with the issues related to the Marital Residence. *Id.*

The trial court never explicitly found Husband in contempt; however, the trial court ruled in Wife's favor regarding the Marital Residence, finding that Husband was non-compliant with the Settlement Agreement. *Appellant's App. Vol. 2, p. 78*. To the extent that the trial court based a portion of the attorney fees award on Husband being noncompliant

¹ There was no hearing in September 2023. Husband is unsure whether the trial court is instead referring to the August hearings or the Order dated September 8, 2023.

or in contempt, this is not supported by the record, as set forth above.

Civil contempt is failing to do something a court in a civil action has ordered to be done for the benefit of an opposing party. *JPMorgan Chase Bank, N.A. v. Brown*, 886 N.E.2d 617, 620 (Ind. Ct. App. 2008). A party who has been injured or damaged by the failure of another to conform to or comply with a court order may seek a finding of contempt. *Id.* Whether a party is in contempt is a matter left to the sound discretion of the trial court, and an appellate court will reverse the trial court's contempt finding only if it is against the logic and effect of the evidence before it or is contrary to law. *Sutton v. Sutton*, 773 N.E.2d 289, 297 (Ind. Ct. App. 2002). To be punished for contempt of a court's order, there must be an order commanding the accused to do or refrain from doing something. *Id.* To hold a party in contempt for a violation of a court order, the trial court must find that the party acted with willful disobedience. *Id.* Moreover, the court order must be clear and certain such that there is no question regarding what a person may or may not do and no question regarding when the order is being violated. *Francies v. Francies*, 759 N.E.2d 1106, 1119 (Ind. Ct. App. 2001), *trans. denied*.

In *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 224 (Ind. Ct. App. 2006), the Court of Appeals held:

In post-dissolution proceedings, the trial court may order a party to pay a reasonable amount toward an opposing party's attorney fees. A trial court's decision to grant or

App-25

deny attorney fees is left to the sound discretion of the trial court, and a decision to deny attorney fees will be reversed only for an abuse of discretion. The trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before it.

When determining whether an award of attorney fees is appropriate, the court may consider such factors as the resources of the parties, the relative earning ability of the parties, and other factors that bear on the reasonableness of the award. Additionally, the trial court may take into account any misconduct on the part of one party that causes the other party to directly incur additional fees.

(Citations omitted).

As set forth above, the trial court erred when ruling on the issues concerning the Marital Residence. Wife unequivocally failed to refinance the Marital Residence before the close of the six-month deadline and subsequently failed to place the property for sale after Husband requested to purchase it pursuant to the unambiguous terms of the Settlement Agreement. Since Wife failed to

refinance the Marital Residence before the deadline, Husband could not have violated the Settlement Agreement. To the contrary, Wife violated the clear and unambiguous terms of the Settlement Agreement when she refused to place the Marital Residence for sale despite knowing that she had not obtained refinancing for the Marital Property before the deadline and that Husband had requested to purchase the property.

Furthermore, the undisputed evidence shows that any delay in the finalization of Wife's refinancing was not a result of Husband. In his August 16, 2023 email, Wife's loan officer explained that the finalization of the refinance loan was still pending on the approval of the flood insurance and the updating of homeowner's insurance. *Ex. Vol. 3, p. 64*. The loan officer in no way asserts that Wife's refinancing application was in jeopardy due to any action or inaction of Husband. *Id.* Therefore, there is no evidence to support a finding that Husband was non-compliant with the Settlement Agreement regarding the Marital Residence.

As such, the order on attorney fees is unreasonable.

Because the trial court committed reversible error when granting Wife's Petition for Rule to Show Cause and denying Husband's Petition for Rule to Show Cause regarding the Marital Residence, the trial court's order awarding attorney's fees to Wife must also be reversed as it relates to the Marital Residence. Therefore, any award of attorney's fees to Wife must be determined (1) without considering any finding that Husband was non-compliant with the Settlement Agreement regarding the Marital

Residence and (2) with consideration of the attorney's fees Husband incurred in connection with his own Petition for Rule to Show Cause. See *Stanke v. Swickard*, 43 N.E.3d 245, 250 (Ind. Ct. App. 2015) ("As we reverse the trial court's findings of contempt against Stanke, we remand to the trial court with instructions to make a determination of appropriate attorney fees without considering any finding of contempt.")

CONCLUSION

For the reasons herein stated, Husband respectfully requests this Court reverse and remand to the trial court with instructions to deny Wife's Petition for Rule to Show Cause, grant Husband's Petition for Rule to Show Cause, order that the Marital Residence be placed immediately for sale with Husband having the right of first refusal to purchase the Marital Residence or otherwise purchase the Marital Residence outright, and recalculate any award of attorney's fees accordingly.

Respectfully submitted,

/s/ Andrea L. Ciobanu

Andrea L. Ciobanu, #28942-49

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App-28

WORD COUNT CERTIFICATE

I hereby certify that this brief contains no more than 14,000 words in compliance with Indiana Appellate Rule 44.

/s/ Andrea L. Ciobanu

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Attorney for Appellant Seth
Adam Lilly

CERTIFICATE OF SERVICE

I hereby further certify that on this 26th day of June 2024, a copy of the foregoing was served by IEFS upon Appellee's trial counsel of record:

Caitlin M. Miller

Jacob H. Miller

Taryn R. Dissett

HASSLER KONDRAS MILLER LLP

100 Cherry St.

Terre Haute, IN 47807

/s/ Andrea L. Ciobanu

Andrea L. Ciobanu, #28942-49

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App-29

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App-30

Appendix B

[Retrieved Mar. 5, 2024]

CASE SUMMARY
CASE NO. 84D02-2206-DC-003750

In Re: the Marriage of Melissa Ann Lilly and Seth Adam Lilly	§	Location:	Vigo
	§		Superior
	§		Court 2
	§	Judicial	Reddy,
	§	Officer:	Lakshmi Y
	§	Filed on:	06/21/2022

CASE INFORMATION

Statistical Closures	Case Type:	DC - Domestic Relations with Children
01/24/2023 Bench	Subtype:	Divorce with Children
Disposition	Case Status:	08/31/2023 Pending
	Case Flags:	Sheriff Service Fee Paid Children Family Court Appeal Received Court Ordered Class Completed Service Returned Served Judicial Specialized Pathway Anger Management

App-31

**Supervised Parenting
Time**

DATE	CASE ASSIGNMENT
------	-----------------

**Current Case
Assignment**

Case Number	84D02-2206-DC-003750
Court	Vigo Superior Court 2
Date Assigned	06/21/2022
Judicial Officer	Reddy, Lakshmi Y

PARTY INFORMATION

Petitioner	Lilly, Melissa Ann <i>293 Crews PL</i> <i>West Terre</i> <i>Haute, IN 47885</i>	Miller, Caitlin Mariel <i>Retained</i> 812-232-9691(W) <i>HASSLER</i> <i>KONDRAS</i> <i>MILLER LLP</i> <i>100 Chewy Street</i> <i>Terre Haute, IN</i> <i>47807</i> miller@hkmlawfirm.com
Respondent	Lilly, Seth Adam NEW ADDRESS	Claussen, John Howard Nehf <i>Retained</i> 812-238-8444(F)

App-32

01/30/2024
3788 E 1800 Ave
Shumway, IL
62461

** Confidential
Phone **
P.O. Box 2239
Terre Haute, IN
47802
John@claussenla
woffice.com

**Interested
Person** **Brown,
Kandace**
*Chances &
Services for
Youth (CASY)
1101 S 13th St
Terre Haute, IN
47802*

DATE	EVENTS & ORDERS OF THE COURT	INDEX
06/21/2022	Case Opened as a New Filing	
06/21/2022	Petition for Dissolution of Marriage with Child(ren) Filed File Stamped: 06/21/2022 <i>Court costs paid \$177.00. hb</i>	
06/21/2022	Subpoena/Summons Filed File Stamp: 06/21/2022 <i>Issued for service by Sheriff at Vigo County Jail. Sheriff fee paid \$28.00 hb</i>	
06/21/2022	Appearance Filed	

App-33

	File Stamp: 06/21/2022 For Party: Petitioner Lilly, Melissa Ann <i>Pro se, hb</i>
06/24/2022	Service Returned Served Date Served: 06/21/2022 Party Served: Respondent Lilly, Seth Adam <i>Seth A. Lilly was served at Jail on 06/21/2022. plk</i>
06/29/2022	Order Issued Order Signed: 06/28/2022 <i>Setting Informal dissolution plan conference. plk</i>
06/29/2022	Hearing Scheduling Activity <i>Pretrial Conference Scheduled for 08/09/2022 at 9:00 AM</i>
06/30/2022	Automated Paper Notice Issued to Parties <i>Order Issued ---- 6/29/2022 Melissa Ann Lilly; Seth Adam Lilly Hearing Scheduling Activity ---- 6/29/2022: Melissa Ann Lilly; Seth Adam Lilly</i>
07/08/2022	Appearance Filed File Stamp: 07/08/2022 For Party: Petitioner Lilly, Melissa Ann

App-34

	<i>Appearance</i>
07/18/2022	Motion for Hearing Filed File Stamp: 07/18/2022 Filed By: Petitioner Lilly, Melissa Ann <i>Motion for Emergency Hearing</i>
07/19/2022	First Class Mail Returned File Stamp: 07/19/2022 Party: Respondent Lilly, Seth Adam <i>Seth A. Lilly's mail from Vigo Jail was returned not in facility at 201 Cherry St. was sent to new jail. plk</i>
07/20/2022	Hearing Scheduling Activity <i>Hearing scheduled for 08/01/2022 at 8:00 AM</i>
07/21/2022	Automated Paper Notice Issued to Parties <i>Hearing Scheduling Activity ---- 7/20/2022 Seth Adam Lilly</i>
07/21/2022	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ---- 7/20/2022 : Caitlin Mariel Miller</i>
07/21/2022	Order Set for Hearing Order Signed: 07/20/2022
07/22/2022	Automated Paper Notice Issued to

App-35

	<p>Parties</p> <p><i>Order Set for Hearing ----</i></p> <p><i>7/21/2022 : Seth Adam Lilly</i></p>
07/22/2022	<p>Automated ENotice Issued to Parties</p> <p><i>Order Set for Hearing ----</i></p> <p><i>7/21/2022 : Caitlin Mariel Miller</i></p>
07/26/2022	<p>Hearing Scheduling Activity</p> <p><i>Hearing originally scheduled on 08/01/2022 at 8:00 AM was rescheduled to 08/03/2022 at 8:00 AM. Reason: Court's Own Motion.</i></p>
07/27/2022	<p>Automated Paper Notice Issued to Parties</p> <p><i>Hearing Scheduling Activity ----</i></p> <p><i>7/26/2022 : Seth Adam Lilly</i></p>
07/27/2022	<p>Automated ENotice Issued to Parties</p> <p><i>Hearing Scheduling Activity ----</i></p> <p><i>7/26/2022 : Caitlin Mariel Miller</i></p>
08/01/2022	<p>First Class Mail Returned</p> <p>File Stamp: 08/01/2022</p> <p>Party: Respondent Lilly, Seth Adam</p> <p><i>Seth A. Lilly mail from Vigo County Jail 201 Cherry St and 600 W. Honey Creek Dr was returned. plk</i></p>

App-36

08/03/2022	Hearing (8:00 AM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2) <i>Emergency/Preliminary Commenced and concluded</i> <i>Parties Present:</i> <i>Attorney Miller, Caitlin Mariel</i> <i>Petitioner Lilly, Melissa Ann</i> <i>Respondent Lilly, Seth Adam</i>
08/03/2022	Hearing Scheduling Activity <i>Pretrial Conference scheduled for 08/09/2022 at 9:00 AM was cancelled. Reason: Other.</i>
08/03/2022	Hearing Scheduling Activity <i>Final Dissolution Hearing scheduled for 12/06/2022 at 1:00 PM.</i>
08/04/2022	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ----</i> <i>8/3/2022 : Caitlin Mariel Miller; Seth Adam Lilly</i> <i>Hearing Scheduling Activity ----</i> <i>8/3/2022 : Caitlin Mariel Miller; Seth Adam Lilly</i>
08/04/2022	Order Issued Order Signed: 08/03/2022
08/05/2022	Automated ENotice Issued to Parties

App-37

	<i>Order Issued ---- 8/4/2022 : Caitlin Mariel Miller; Seth Adam Lilly</i>
08/09/2022	CANCELED Pretrial Conference (9:00 AM) (Judicial Officer: Reddy, Lakshmi Y; Location: Vigo Superior 2) <i>Other Informal Dissolution</i>
08/10/2022	Notice to Court Filed File Stamp: 08/10/2022 Filed By: Respondent Lilly, Seth Adam <i>Seth Lilly writes to Court to say his FSA appointment will be 8/23/22 at 10am. plk</i>
08/10/2022	First Class Mail Returned File Stamp: 08/10/2022 <i>Seth Lilly mail from Vigo County Jail was returned. plk</i>
08/11/2022	Correspondence to/from Court Filed File Stamp: 08/11/2022 <i>Father notifies Court that he has scheduled an appointment with FSA on August 23rd for an evaluation.</i>
08/18/2022	Correspondence to/from Court Filed File Stamp: 08/18/2022 Filed By: Respondent Lilly, Seth

App-38

	Adam <i>Seth A. Lilly emails court his appointment schedule. plk</i>
08/18/2022	Appearance Filed File Stamp: 08/18/2022 For Party: Petitioner Lilly, Melissa Ann <i>Appearance</i>
08/18/2022	Motion to Intervene Filed File Stamp: 08/18/2022 Filed By: Petitioner Lilly, Melissa Ann <i>Motion to Intervene</i>
08/19/2022	Automated ENotice Issued to Parties <i>Correspondence to/from Court Filed ---- 8/18/2022 : Melissa Ann Lilly; Caitlin Mariel Miller; Seth Adam Lilly</i>
08/19/2022	Order Granting Motion to Intervene (Judicial Officer: Reddy, Lakshmi Y) Order Signed: 08/19/2022
08/19/2022	Order Issued Order Signed: 08/19/2022
08/20/2022	Automated ENotice Issued to Parties <i>Order Granting Motion to Intervene ---- 8/19/2022 : Megan</i>

App-39

	<p><i>N Iliff; Caitlin Mariel Miller; Seth Adam Lilly</i> <i>Order Issued ---- 8/19/2022</i> <i>Megan N Iliff; Caitlin Mariel Miller; Seth Adam Lilly</i></p>
11/04/2022	<p>Hearing Scheduling Activity <i>Final Dissolution Hearing originally scheduled on 12/06/2022 at 1:00 PM was rescheduled to 12/06/2022 at 8:00 AM Reason: Court's Own Motion.</i></p>
11/05/2022	<p>Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ---- 11/4/2022 : Melissa Ann Lilly; Caitlin Mariel Miller; Seth Adam Lilly</i></p>
12/05/2022	<p>Motion for Continuance Filed File Stamp: 12/05/2022 Filed By: Petitioner Lilly, Melissa Ann <i>Motion for Brief Continuance</i></p>
12/06/2022	<p>Hearing Scheduling Activity <i>Final Dissolution Hearing originally scheduled on 12/06/2022 at 8:00 AM was rescheduled to 12/13/2022 at 9:00 AM Reason: By Request.</i></p>
12/06/2022	<p>Order Issued</p>

App-40

	<p>Order Signed: 12/06/2022 <i>Order resetting Final Dissolution Hearing.</i></p>
12/06/2022	<p>Appearance Filed File Stamp: 12/06/2022 For Party: Respondent Lilly, Seth Adam <i>Appearance</i></p>
12/06/2022	<p>Motion for Continuance Filed File Stamp: 12/06/2022 Filed By: Respondent Lilly, Seth Adam <i>Verified Motion for Continuance due to Scheduling Conflict</i></p>
12/07/2022	<p>Automated ENotice Issued to Parties <i>Order Issued ---- 12/6/2022 : Megan Iliff; Caitlin Mariel Miller; Seth Adam Lilly</i> <i>Hearing Scheduling Activity ---- 12/6/2022 : Melissa Ann Lilly; Caitlin Mariel Miller; Karen Richardson Swopes</i></p>
12/07/2022	<p>Motion Filed File Stamp: 12/07/2022 Filed By: Petitioner Lilly, Melissa Ann <i>Objection to Motion to Continue and Request for Attorney Fees</i></p>

App-41

12/08/2022	Telephonic Communication with Party Party: Petitioner Lilly, Melissa Ann <i>Melissa Lilly emailed the Court asking for Appearance and Motion for continuance filed by Karen Swopes. Copy was emailed to her. plk</i>
12/08/2022	Hearing Scheduling Activity <i>Final Dissolution Hearing originally scheduled on 12/13/2022 at 9:00 AM was rescheduled to 12/29/2022 at 1:00 PM Reason: By Request.</i>
12/08/2022	Order Issued Order Signed: 12/08/2022 <i>Order granting Respondent's Motion to Continue.</i>
12/08/2022	Hearing Scheduling Activity <i>Final Dissolution Hearing scheduled for 12/29/2022 at 1:00 PM was cancelled. Reason: Assigned in Error.</i>
12/08/2022	Hearing Scheduling Activity Final Dissolution Hearing scheduled for 01/19/2023 at 1:00 PM
12/09/2022	Automated ENotice Issued to

App-42

	<p>Parties</p> <p><i>Order Issued ---- 12/8/2022 : Megan N liff; Caitlin Mariel Miller; Karen Richardson Swopes</i></p> <p><i>Hearing Scheduling Activity ---- 12/8/2022 : Melissa Ann Lilly; Caitlin Mariel Miller; Karen Richardson Swopes</i></p> <p><i>Hearing Scheduling Activity ---- 12/8/2022 : Melissa Ann Lilly; Caitlin Mariel Miller; Karen Richardson Swopes</i></p>
12/19/2022	<p>Notice to Court Filed</p> <p>File Stamp: 12/19/2022</p> <p><i>Seth Lilly completed</i></p> <p><i>Transparenting class on 11/07/2022. plk</i></p>
12/29/2022	<p>CANCELED Final Dissolution Hearing (1:00 PM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2)</p> <p><i>Assigned in Error</i></p>
01/18/2023	<p>Notice to Court Filed</p> <p>File Stamp: 01/18/2023</p> <p>Filed By: Petitioner Lilly, Melissa Ann</p> <p><i>Notice of Completion</i></p>
01/19/2023	<p>Final Dissolution Hearing (1:00 PM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior</p>

App-43

	2) <i>Commenced and concluded Parties Present: Attorney Swopes, Karen Richardson Attorney Miller, Caitlin Mariel Petitioner Lilly, Melissa Ann Respondent Lilly, Seth Adam</i>
01/19/2023	Report Filed File Stamp: 01/19/2023 Filed By: Respondent Lilly, Seth Adam <i>FSA Letter of Progress</i>
01/19/2023	Order Issued Order Signed: 01/19/2023 <i>Court Referral Inquiry to Gibault Children' Services.</i>
01/19/2023	Order Issued Order Signed: 01/19/2023 <i>Order on January 19, 2023 hearing.</i>
01/19/2023	Order Issued Order Signed: 01/19/2023 <i>Referral Order to Casy Family Navigator.</i>
01/19/2023	Information Filed File Stamp: 01/19/2023 Filed By: Petitioner Lilly, Melissa Ann; Respondent Lilly, Seth

App-44

	Adam <i>Parties submit there information.plk</i>
01/20/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 1/19/2023 : Megan N Iliff; Caitlin Mariel Miller; Karen Richardson Swopes Report Filed ---- 1/19/2023 : Melissa Ann Lilly; Caitlin Mariel Miller; Karen Richardson Swopes Order Issued ---- 1/19/2023 : Caitlin Mariel Miller; Karen Richardson Swopes Order Issued ---- 1/19/2023 : Caitlin Mariel Miller; Karen Richardson Swopes</i>
01/20/2023	Report Filed File Stamp: 01/20/2023 <i>Gibault acceptance to program.</i>
01/21/2023	Automated ENotice Issued to Parties <i>Report Filed ---- 1/20/2023 : Caitlin Mariel Miller; Karen Richardson Swopes</i>
01/23/2023	Order Issued Order Signed: 01/23/2023 <i>Court Referral to Gibault Children's Services.</i>

App-45

01/24/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 1/23/2023 : Caitlin Mariel Miller; Karen Richardson Swopes</i>
01/24/2023	Waiver of Final Hearing Filed File Stamp: 01/23/2023 Filed By: Petitioner Lilly, Melissa Ann; Respondent Lilly, Seth Adam <i>Waiver</i>
01/24/2023	Decree Issued Order Signed: 01/24/2023 <i>W/Settlement</i>
01/25/2023	Automated ENotice Issued to Parties <i>Decree Issued ---- 1/24/2023 : Melissa Ann Lilly; Caitlin Mariel Miller; Karen Richardson Swopes</i>
01/26/2023	Notice to Court Filed File Stamp: 01/18/2023 <i>Seth Lilly completed Transparenting class on November 7, 2022.</i>
02/21/2023	Correspondence to/from Court Filed File Stamp: 02/21/2023 <i>Letter and Consent form for CASY to Melissa Lilly-Emailed through Odyssey and sent U.S. Postal to</i>

App-46

	<i>Attorney Caitlin Miller.</i>
02/21/2023	Correspondence to/from Court Filed File Stamp: 02/21/2023 <i>Letter and Consent Form for CASY to Seth Lilly-Emailed through Odyssey and mailed U.S Postal to Attorney Karen Swopes.</i>
02/22/2023	Automated ENotice Issued to Parties <i>Correspondence to/from Court Filed ---- 2/21/2023 : Caitlin Mariel Miller Correspondence to/from Court Filed ---- 2/21/2023 : Karen Richardson Swopes</i>
02/24/2023	Information Filed File Stamp: 02/23/2023 <i>Consent received to be placed in Vigo County Family & Child Centered Court Project and referred to Family Navigator.</i>
02/24/2023	Information Filed File Stamp: 02/23/2023 <i>Consent received to be place into Vigo County Family & Child Centered Court Project and referred to Family Navigator from Seth Lilly.</i>
03/13/2023	Motion to Withdraw Appearance

App-47

	Filed File Stamp: 03/13/2023 Filed By: Respondent Lilly, Seth Adam <i>Motion To Withdraw Appearance</i>
03/14/2023	Order Issued Order Signed: 03/14/2023 <i>Order granting Motion to Withdraw Appearance-Karen R. Swopes.</i>
03/15/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 3/14/2023 : Caitlin Mariel Miller; Seth Adam Lilly; Karen Richardson Swopes</i>
03/21/2023	Motion to Modify Filed File Stamp: 03/21/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Motion to Modify Services</i>
03/21/2023	Petition Filed File Stamp: 03/21/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Petition for Restraining Order</i>
03/21/2023	Motion Filed File Stamp: 03/21/2023 Filed By: Petitioner Lilly, Melissa Ann

App-48

	<i>Motion for Psych Eval</i>
03/21/2023	Petition Filed File Stamp: 03/21/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Petition for RTSC</i>
03/23/2023	Hearing Scheduling Activity <i>Hearing scheduled for 04/12/2023 at 2:00 PM.</i>
03/23/2023	Order Set for Hearing Order Signed: 03/23/2023 <i>Mother's Verified Motion to Modify Services</i>
03/23/2023	Order Set for Hearing Order Signed: 03/23/2023 <i>Mother's Verified Motion for Psychological Evaluation</i>
03/23/2023	Order Set for Hearing Order Signed: 03/23/2023 <i>Mother's Verified Petition for Rule to Show Cause and Atty fees</i>
03/23/2023	Order Set for Hearing Order Signed: 03/23/2023 <i>Mother's Verified Petition for Restraining Order and Request for Emergency Hearing</i>
03/24/2023	Automated ENotice Issued to

App-49

	<p>Parties</p> <p><i>Order Set for Hearing ----</i></p> <p><i>3/23/2023 : Megan N Iliff; Caitlin Mariel Miller; Seth Adam Lilly</i></p> <p><i>Order Set for Hearing ----</i></p> <p><i>3/23/2023 : Megan N Iliff; Caitlin Mariel Miller; Seth Adam Lilly</i></p> <p><i>Order Set for Hearing ----</i></p> <p><i>3/23/2023 : Megan N Iliff; Caitlin Mariel Miller; Seth Adam Lilly</i></p> <p><i>Order Set for Hearing ----</i></p> <p><i>3/23/2023 : Megan N Iliff; Caitlin Mariel Miller; Seth Adam Lilly</i></p> <p><i>Hearing Scheduling Activity ----</i></p> <p><i>3/23/2023 : Melissa Ann Lilly; Caitlin Mariel Miller; Seth Adam Lilly</i></p>
03/24/2023	<p>Correspondence to/from Court Filed</p> <p>File Stamp: 03/24/2023</p> <p><i>Second Letter and Consent Form sent to Attorney Caitlin Miller for Melissa Lilly.</i></p>
03/25/2023	<p>Automated ENotice Issued to Parties</p> <p><i>Correspondence to/from Court Filed ---- 3/24/2023 : Caitlin Mariel Miller</i></p>
03/28/2023	<p>Consent Form Filed</p> <p>File Stamp: 03/28/2023</p> <p>Filed By: Petitioner Lilly, Melissa Ann</p>

App-50

	<i>Court recieves returned Consent Form from Melissa Lilly.</i>
04/03/2023	Order Issued Order Signed: 04/03/2023 <i>Order for Professional Advice.</i>
04/04/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 4/3/2023 : Caitlin Mariel Miller; Seth Adam Lilly</i>
04/06/2023	Appearance Filed File Stamp: 04/06/2023 For Party: Respondent Lilly, Seth Adam <i>Appearance -mns</i>
04/06/2023	Motion for Continuance Filed File Stamp: 04/06/2023 Filed By: Respondent Lilly, Seth Adam <i>Motion to Continue -mns</i>
04/06/2023	Response to a Petition Filed File Stamp: 04/06/2023 Filed By: Respondent Lilly, Seth Adam <i>Response to Rule to Show Cause -mns</i>
04/06/2023	Answer Filed File Stamp: 04/06/2023

App-51

	Filed By: Respondent Lilly, Seth Adam <i>Response to Petitioner's Request for Restraining Order -mns</i>
04/06/2023	Motion Filed File Stamp: 04/06/2023 Filed By: Respondent Lilly, Seth Adam <i>Response to Motion to Modify Services -mns</i>
04/06/2023	Motion Filed File Stamp: 04/06/2023 Filed By: Respondent Lilly, Seth Adam <i>Cross Motion for Psychological Evaluation -mns</i>
04/06/2023	Motion Filed File Stamp: 04/06/2023 Filed By: Respondent Lilly, Seth Adam <i>Motion for Open Communication with Children -mns</i>
04/07/2023	Automated ENotice Issued to Parties <i>Answer Filed ---- 4/6/2023 : John Howard Nehf Claussen; Melissa Ann Lilly; Caitlin Mariel Miller</i>
04/11/2023	Objection Filed File Stamp: 04/11/2023

App-52

	Filed By: Petitioner Lilly, Melissa Ann <i>Objection to Motion to Continue - mns</i>
04/11/2023	Hearing Scheduling Activity <i>Hearing originally scheduled on 04/12/2023 at 2:00 PM was rescheduled to 04/13/2023 at 9:00 AM. Reason: By Request.</i>
04/11/2023	Notice Issued to Parties <i>Telephonic informal attorney conference held on 4/11/2023. Both parties agree to move hearing set on 4/12/2023 to 4/13/2023 at 9:00 a.m.</i>
04/12/2023	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ---- 4/11/2023 : John Howard Nehf Claussen; Melissa Ann Lilly; Caitlin Mariel Miller</i>
04/12/2023	Order Issued Order Signed: 04/12/2023 <i>Order granting Respondent's Motion to Continue.</i>
04/12/2023	Affidavit in Support of Attorney fees File Date: 04/11/2023 Filed By: Petitioner Lilly, Melissa Ann

App-53

	<i>Verified Petition – AF</i>
04/12/2023	Subpoena/Summons Filed File Stamp: 04/12/2023 Filed By: Respondent Lilly, Seth Adam <i>Subpoena Abigail Brown – AF</i>
04/12/2023	Motion for In Camera Interview File Date: 04/12/2023 Filed By: Respondent Lilly, Seth Adam <i>Motion for Zoom Testimony – AF</i>
04/12/2023	Motion Filed File Stamp: 04/12/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Motion to Clarify – AF</i>
04/12/2023	Motion to Modify Filed File Stamp: 04/12/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Verified Petition to Modify Child Support – AF</i>
04/13/2023	Hearing (9:00 AM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2) <i>Mothers Motion for Psychological Evaluation, Rule t0 Show Cause, Restraining Order Request for Emergency Hearing, Modify</i>

App-54

	<i>Services, Attorney Fees Commenced and concluded Parties Present: Attorney Claussen, John Howard Nehf Attorney Miller, Caitlin Mariel Petitioner Lilly, Melissa Ann Respondent Lilly, Seth Adam</i>
04/13/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 4/12/2023 : John Howard Nehf Claussen; Megan N Iliff; Caitlin Mariel Miller</i>
04/13/2023	Motion for Rule to Show Cause Filed File Stamp: 04/13/2023 Filed By: Respondent Lilly, Seth Adam <i>Amended Response to Rule to Show Cause – AF</i>
04/17/2023	Order Issued Order Signed: 04/17/2023 <i>Order on scheduled hearing on April 13, 2023, 2nd Referral to CASY, Consent to Jurisdiction and Appointment to Guardian Ad Litem.</i>
04/17/2023	Order Issued Order Signed: 04/17/2023

App-55

	<i>Appointment of Guardian Ad Litem.</i>
04/18/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 4/17/2023 : John Howard Nehf Claussen; Caitlin Mariel Miller</i> <i>Order Issued ---- 4/17/2023 : John Howard Nehf Claussen; Caitlin Mariel Miller</i>
04/18/2023	Hearing Scheduling Activity <i>Hearing scheduled for 08/28/2023 at 9:00 AM.</i>
04/18/2023	Hearing Scheduling Activity <i>Hearing scheduled for 08/31/2023 at 9:00 AM.</i>
04/19/2023	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ---- 4/18/2023 : John Howard Nehf Claussen; Melissa Ann Lilly; Caitlin Mariel Miller</i> <i>Hearing Scheduling Activity ---- 4/18/2023 : John Howard Nehf Claussen; Melissa Ann Lilly; Caitlin Mariel Miller</i>
04/19/2023	Order Issued Order Signed: 04/19/2023 <i>Order setting hearings on August</i>

App-56

	<i>28, 2023 and August 31, 2023 for two full days.</i>
04/20/2023	Automated ENotice Issued to Parties Order Issued ---- 4/19/2023 Erin Kiley Anderson; John Howard Nehf Claussen; Megan N Iliff; Caitlin Mariel Miller
04/21/2023	Document Filed File Stamp: 04/21/2023 Filed By: Respondent Lilly, Seth Adam <i>Consent Pamela Lilly – af</i>
04/21/2023	Document Filed File Stamp: 04/21/2023 Filed By: Respondent Lilly, Seth Adam <i>Consent Andrew Lilly – af</i>
04/21/2023	Document Filed File Stamp: 04/21/2023 Filed By: Respondent Lilly, Seth Adam <i>Consent Andrea Hagler – af</i>
04/24/2023	Document Filed File Stamp: 04/24/2023 <i>Vigo County Family & Child Centered Court Project-Navigator letter 4/20/2023.</i>

App-57

04/24/2023	Document Filed File Stamp: 04/24/2023 Filed By: Respondent Lilly, Seth Adam <i>Consent to Jurisdiction Christopher Schmid – af</i>
04/24/2023	Document Filed File Stamp: 04/24/2023 Filed By: Respondent Lilly, Seth Adam <i>Consent to Jurisdiction Sarah Schmid – af</i>
04/25/2023	Document Filed File Stamp: 04/25/2023 <i>Letter from Family Navigator regarding 4/22-4/23/2023 weekend.</i>
04/25/2023	Document Filed File Stamp: 04/25/2023 Filed By: Respondent Lilly, Seth Adam <i>Consent to Jurisdiction Dustin Hagler – af</i>
04/25/2023	Order Issued (Judicial Officer: Reddy, Lakshmi Y) Order Signed: 04/24/2023 <i>Order issued in regards to Family Navigator. – AF</i>
04/26/2023	Automated ENotice Issued to

App-58

	Parties <i>Order Issued ---- 4/25/2023 : John Howard Nehf Claussen; Melissa Ann Lilly; Caitlin Mariel Miller; Seth Adam Lilly</i>
04/26/2023	Document Filed File Stamp: 04/26/2023 <i>Responds to Seth Lilly's email April 24, 2023 from Kandace Brown / CASY Navigator.</i>
04/28/2023	Order Issued Order Signed: 04/27/2023 <i>Order issued after Court receiving Consent to Jurisdiction Forms.</i>
04/29/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 4/28/2023 : John Howard Nehf Claussen; Megan N Iliff; Caitlin Mariel Miller</i>
05/01/2023	Document Filed File Stamp: 05/01/2023 <i>Document filed by CASY/Family Navigator.</i>
05/05/2023	Document Filed File Stamp: 05/05/2023 <i>Gibault individual visitation report; 4/22/2023</i>

App-59

05/05/2023	Document Filed File Stamp: 05/05/2023 <i>Gibault individual visitation report; 4/23/2023.</i>
05/08/2023	Motion Filed File Stamp: 05/08/2023 Filed By: Respondent Lilly, Seth Adam <i>Motion to Clarify – af</i>
05/09/2023	Notice Issued to Parties <i>Email rec'd from Family Navigator on 5/8/2023 is stricken from the record.</i>
05/10/2023	Order Issued Order Signed: 05/10/2023 <i>Order as to CASY Program.</i>
05/11/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 5/10/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Caitlin Mariel Miller</i>
05/12/2023	Order Issued Order Signed: 05/11/2023 <i>Order Regarding Respondent's Motion To Clarify April 17, 2023</i>
05/13/2023	Automated ENotice Issued to

App-60

	<p>Parties</p> <p><i>Order Issued ---- 5/12/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown Megan N Iliff; Caitlin Mariel Miller</i></p>
05/15/2023	<p>Notice Filed</p> <p>File Stamp: 05/15/2023</p> <p>Filed By: Attorney Anderson, Erin Kiley</p> <p><i>Notice of Acceptance – af</i></p>
05/16/2023	<p>Automated ENotice Issued to Parties</p> <p><i>Notice Filed ---- 5/15/2023 : John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i></p>
05/17/2023	<p>Document Filed</p> <p>File Stamp: 05/17/2023</p> <p><i>Gibault Individual Report Visitation-5/3/2023.</i></p>
05/17/2023	<p>Document Filed</p> <p>File Stamp: 05/17/2023</p> <p><i>Gibault Individual Visitation Report-5/10/2023.</i></p>
05/22/2023	<p>Appearance Filed</p> <p>File Stamp: 05/22/2023</p> <p>For Party: Attorney Anderson, Erin Kiley</p>

App-61

	<i>Appearance – af</i>
06/15/2023	Document Filed File Stamp: 06/15/2023 <i>Gibault Individual Visitation Report; 5/17/2023</i>
06/15/2023	Document Filed File Stamp: 06/15/2023 <i>Gibault Individual Visitation Report; 5/24/2023</i>
06/15/2023	Document Filed File Stamp: 06/15/2023 <i>Gibault Individual Visitation Report; 5/31/2023</i>
06/15/2023	Document Filed File Stamp: 06/15/2023 <i>Gibault Individual Visitation Report; 6/7/2023</i>
06/16/2023	Motion Filed File Stamp: 06/15/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Verified Motion to Suspend – af</i>
06/21/2023	Motion Filed File Stamp: 06/20/2023 Filed By: Attorney Anderson, Erin Kiley <i>MOTION FOR SPEEDY HEARING OR</i>

App-62

	<i>DETERMINATION REGARDING FATHERS PARENTING TIME – af</i>
06/21/2023	Response Filed File Stamp: 06/21/2023 Filed By: Respondent Lilly, Seth Adam <i>Father's Response – af</i>
06/22/2023	Order Issued Order Signed: 06/22/2023 Order setting hearing Mother's Motion to Suspend Father's Visitation and Phone Calls- Expedited Hearing.
06/22/2023	Order Issued Order Signed: 06/22/2023 <i>Order setting Mother's Motion to Suspend and GAL Motion for Speedy Hearing and Determination.</i>
06/23/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 6/22/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Megan N Iliff; Caitlin Mariel Miller Order Issued ---- 6/22/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown;</i>

App-63

	<i>Megan N Iliff; Caitlin Mariel Miller</i>
06/23/2023	Hearing Scheduling Activity <i>Hearing scheduled for 07/07/2023 at 9:30 AM</i>
06/23/2023	Report Filed File Stamp: 06/22/2023 Filed By: Interested Person Brown, Kandace <i>Individual Report Visitation dated 6/21/2023.</i>
06/24/2023	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ---- 6/23/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller Report Filed ---- 6/23/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
06/28/2023	Document Filed File Stamp: 06/28/2023 <i>Gibault Individual Visitation Report; 6/14/2023.</i>
06/30/2023	Document Filed File Stamp: 06/30/2023

App-64

	Letter rec'd from Family Court Navigator.
07/06/2023	Subpoena/Summons Filed File Stamp: 07/05/2023 Filed By: Respondent Lilly, Seth Adam <i>Subpoena – af</i>
07/06/2023	Subpoena/Summons Filed File Stamp: 07/05/2023 Filed By: Respondent Lilly, Seth Adam <i>Subpoena – af</i>
07/06/2023	Subpoena/Summons Filed File Stamp: 07/05/2023 Filed By: Respondent Lilly, Seth Adam <i>Subpoena – af</i>
07/06/2023	Hearing Scheduling Activity <i>Hearing originally scheduled on 07/07/2023 at 8:30 AM was rescheduled to 07/07/2023 at 8:00 AM Reason: Court's Own Motion.</i>
07/07/2023	Hearing (8:00 AM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2) <i>Expedited Hearing-Mother's Veried Motion to Suspend Father's Visitation and Phone Calls and GAL Motion for Determination.</i>

App-65

	<i>Commenced and concluded</i> <i>Parties Present:</i> <i>Attorney Claussen, John Howard</i> <i>Nehf</i> <i>Attorney Miller, Caitlin Mariel</i> <i>Attorney Anderson, Erin Kiley</i> <i>Guardian Ad Litem Anderson,</i> <i>Erin Kiley</i> <i>Petitioner Lilly, Melissa Ann</i> <i>Respondent Lilly, Seth Adam</i>
07/07/2023	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ----</i> <i>7/6/2023 : Erin Kiley Anderson;</i> <i>John Howard Nehf Claussen;</i> <i>Kandace Brown; Melissa Ann</i> <i>Lilly; Caitlin Mariel Miller</i>
07/07/2023	Information Filed File Stamp: 07/07/2023 Filed By: Respondent Lilly, Seth Adam <i>Batterers Intervention Certificate –</i> <i>af</i>
07/07/2023	Information Filed File Stamp: 07/07/2023 Filed By: Respondent Lilly, Seth Adam <i>Parents Forever Certificate – af</i>
07/07/2023	Information Filed File Stamp: 07/07/2023

App-66

	Filed By: Respondent Lilly, Seth Adam <i>Managing Emotions Certificate – af</i>
07/07/2023	Information Filed File Stamp: 07/07/2023 Filed By: Respondent Lilly, Seth Adam <i>Early Childhood STEP Certificate – af</i>
07/12/2023	Document Filed File Stamp: 07/12/2023 Filed By: Petitioner Lilly, Melissa Ann <i>submission of App close conversations – af</i>
07/13/2023	Document Filed File Stamp: 07/10/2023 <i>Individual Report Visitation- 6/28/2023.</i>
07/13/2023	Report Filed File Stamp: 07/10/2023 <i>Individual Report Visitation- 6/28/2023.</i>
07/13/2023	Report Filed File Stamp: 07/10/2023 <i>Individual Report Visitation- 7/5/2023.</i>

App-67

07/14/2023	<p>Automated ENotice Issued to Parties</p> <p><i>Report Filed ---- 7/13/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i></p> <p><i>Report Filed ---- 7/13/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i></p>
07/14/2023	<p>Order Issued</p> <p>Order Signed: 07/14/2023</p> <p>Order on hearing held July 7, 2023.</p>
07/15/2023	<p>Automated ENotice Issued to Parties</p> <p><i>Order Issued ---- 7/14/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller; Seth Adam Lilly</i></p>
07/28/2023	<p>Report Filed</p> <p>File Stamp: 07/26/2023</p> <p>Filed By: Interested Person Brown, Kandace</p> <p><i>Family Court Navigator Report.</i></p>
07/29/2023	<p>Automated ENotice Issued to Parties</p>

App-68

	<i>Report Filed ---- 7/28/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
07/31/2023	Order Issued Order Signed: 07/28/2023 <i>Retirement Benefit Court Order.</i>
08/01/2023	Automated ENotice Issued to Parties <i>Report Filed ---- 7/28/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i> <i>Order Issued ---- 7/31/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Caitlin Mariel Miller</i>
08/15/2023	Information Filed File Stamp: 08/15/2023 Filed By: Respondent Lilly, Seth Adam <i>Choices Counseling Certificate of Completion – af</i>
08/16/2023	Report Filed File Stamp: 08/14/2023 Filed By: Interested Person Brown, Kandace <i>MMPI-2 REPORT FILED BY</i>

App-69

	<i>JASON A. WARNER PH.D. AND INTERESTED PERSON.</i>
08/16/2023	Report Filed File Stamp: 08/14/2023 Filed By: Interested Person Brown, Kandace <i>REPORT FILED BY JASON A. WARNER PH.D. AND INTERESTED PERSON.</i>
08/17/2023	Automated ENotice Issued to Parties <i>Report Filed ---- 8/16/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller Report Filed ---- 8/16/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
08/22/2023	Notice Filed File Stamp: 08/21/2023 Filed By: Attorney Anderson, Erin Kiley <i>Notice of Submission of GAL Report – af</i>
08/22/2023	Report Filed File Stamp: 08/21/2023 Filed By: Attorney Anderson, Erin

App-70

	Kiley <i>Guardian Ad Litem Report – af</i>
08/23/2023	Automated ENotice Issued to Parties <i>Notice Filed ---- 8/22/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i> <i>Report Filed ---- 8/22/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
08/24/2023	Subpoena/Summons Filed File Stamp: 08/23/2023 Filed By: Respondent Lilly, Seth Adam <i>SUBPOENA – af</i>
08/24/2023	Subpoena/Summons Filed File Stamp: 08/23/2023 Filed By: Respondent Lilly, Seth Adam <i>SUBPOENA – af</i>
08/24/2023	Subpoena/Summons Filed File Stamp: 08/23/2023 Filed By: Respondent Lilly, Seth Adam <i>SUBPOENA – af</i>

App-71

08/28/2023	Hearing (9:00 AM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2) <i>Two day hearing on August 28, 2023 and August 31, 2023 starting at 9:00 a.m. both days.</i> <i>Commenced and concluded</i> <i>Parties Present:</i> <i>Attorney Claussen, John Howard Nehf</i> <i>Attorney Miller, Caitlin Mariel</i> <i>Attorney Anderson, Erin Kiley</i> <i>Guardian Ad Litem Anderson, Erin Kiley</i> <i>Petitioner Lilly, Melissa Ann</i> <i>Respondent Lilly, Seth Adam</i>
08/29/2023	Motion for Rule to Show Cause Filed File Stamp: 08/28/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Verified Petition for RTSC and</i> <i>Petition for Attorney Fees – af</i>
08/29/2023	Subpoena/Summons Filed File Stamp: 08/29/2023 Filed By: Respondent Lilly, Seth Adam <i>Subpoena – af</i>
08/30/2023	Order Issued Order Signed: 08/29/2023

App-72

08/30/2023	<p>Motion for Rule to Show Cause Filed File Stamp: 08/30/2023 Filed By: Respondent Lilly, Seth Adam <i>Respondents Response to Petition for Rule to Show Cause and Attorney Fees – af</i></p>
08/30/2023	<p>Motion for Rule to Show Cause Filed File Stamp: 08/30/2023 Filed By: Respondent Lilly, Seth Adam <i>Verified Motion for Rule to Show Cause, Enforce Previous Order and Attorney Fees – af</i></p>
08/31/2023	<p>Hearing (9:00 AM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2) <i>two full day hearings set for August 28, 2023 and August 31, 2023 starting at 9:00 a.m. both days. Commenced and concluded Parties Present: Attorney Claussen, John Howard Nehf Attorney Miller, Caitlin Mariel Attorney Anderson, Erin Kiley Guardian Ad Litem Anderson, Erin Kiley Petitioner Lilly, Melissa Ann</i></p>

App-73

	<i>Respondent Lilly, Seth Adam</i>
08/31/2023	Automated ENotice Issued to Parties <i>Order Issued --- 8/30/2023 : John Howard Nehf Claussen; Megan N Iliff; Caitlin Mariel Miller</i>
08/31/2023	Report Filed File Stamp: 08/31/2023 Filed By: Interested Person Brown, Kandace <i>Kandace Brown submits report on Seth Lilly. plk</i>
09/01/2023	Order Issued Order Signed: 09/01/2023 <i>Order appointing Jon Spurr to serve as Commissioner.</i>
09/02/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 9/1/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Megan N Iliff; Caitlin Mariel Miller</i>
09/08/2023	Order Issued Order Signed: 09/08/2023 <i>Termination of GAL Services.</i>
09/08/2023	Order Issued Order Signed: 09/08/2023 <i>Order from 8/28 and 8/31/2023</i>

App-74

	<i>hearing.</i>
09/08/2023	Hearing Scheduling Activity <i>Hearing scheduled for 12/06/2023 at 8:30 AM.</i>
09/08/2023	Hearing Scheduling Activity <i>Review Hearing scheduled for 01/06/2025 at 9:00 AM.</i>
09/09/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 9/8/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Megan N Iliff; Caitlin Mariel Miller Order Issued ---- 9/8/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Megan N Iliff; Caitlin Mariel Miller Hearing Scheduling Activity ---- 9/8/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller Hearing Scheduling Activity ---- 9/8/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
09/11/2023	Motion Filed

App-75

	File Stamp: 09/11/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Motion for Medical Insurance – af</i>
09/18/2023	Order Issued Order Signed: 09/15/2023 <i>Order issued, Respondent to obtain insurance coverage for J.L. and H.L.</i>
09/19/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 9/18/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Child Support Division; Megan N Iliff; Caitlin Mariel Miller</i>
09/20/2023	Notice Filed File Stamp: 09/20/2023 Filed By: Respondent Lilly, Seth Adam <i>Notice of Compliance – af</i>
09/21/2023	Automated ENotice Issued to Parties <i>Notice Filed ---- 9/20/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
10/05/2023	Report Filed

App-76

	File Stamp: 10/05/2023 <i>Letter from Counseling Pathways dated 9/26/2023; rec'd from Family Navigator.</i>
10/06/2023	Automated ENotice Issued to Parties <i>Report Filed ---- 10/5/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Megan N Iliff; Caitlin Mariel Miller</i>
10/10/2023	Motion to Correct Error Filed File Stamp: 10/08/2023 Filed By: Respondent Lilly, Seth Adam <i>Motion to Correct Error – af</i>
10/10/2023	Motion to Correct Error Filed File Stamp: 10/09/2023 Filed By: Petitioner Lilly, Melissa Ann <i>Motion to Correct Error – af</i>
10/10/2023	Motion Filed File Stamp: 10/10/2023 Filed By: Respondent Lilly, Seth Adam <i>Motion to Clarify 9/8/2023 Order – af</i>
10/11/2023	Motion to Correct Error Filed File Stamp: 10/11/2023

App-77

	Filed By: Respondent Lilly, Seth Adam <i>Amended Motion to Correct Error – af</i>
10/18/2023	Order Issued Order Signed: 10/18/2023 <i>Order on Father’s Motion to Correct Error.</i>
10/18/2023	Order Issued Order Signed: 10/18/2023 <i>Order on Mother’s Motion to Correct Error.</i>
10/18/2023	Order Issued Order Signed: 10/18/2023 <i>Order on Motion to Clarify.</i>
10/19/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 10/18/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Child Support Division; Megan N Iliff; Caitlin Mariel Miller Order Issued ---- 10/18/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Child Support Division; Megan N Iliff; Caitlin Mariel Miller Order Issued ---- 10/18/2023 :</i>

App-78

	<i>Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Child Support Division; Megan N Iliff; Caitlin Mariel Miller</i>
10/20/2023	Order Issued Order Signed: 10/20/2023 <i>Order scheduling hearing.</i>
10/20/2023	Hearing Scheduling Activity <i>Hearing originally scheduled on 12/06/2023 at 8:30 AM was rescheduled to 12/06/2023 at 8:15 AM Reason: Court's Own Motion.</i>
10/21/2023	Automated ENotice Issued to Parties <i>Order Issued ---- 10/20/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Caitlin Mariel Miller Hearing Scheduling Activity ---- 10/20/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
11/20/2023	Hearing Scheduling Activity <i>Hearing originally scheduled on 12/06/2023 at 8:15 AM was rescheduled to 01/03/2024 at 8:15 AM. Reason: Court's Own Motion.</i>

App-79

11/20/2023	Notice Issued to Parties <i>On Courts Own Motion due to Jury Trial, the hearing set on 12/6/2023 is reset to 1/3/2024 8:15 a.m.</i>
11/21/2023	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ---- 11/20/2023 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
01/05/2024	Notice Issued to Parties <i>Hearing set on 1/3/2024 was cancelled by request of attorneys due to sickness and court awaits on attorneys to reschedule.</i>
01/09/2024	Hearing Scheduling Activity <i>Hearing originally scheduled on 01/03/2024 at 8:15 AM was rescheduled to 01/30/2024 at 2:00 PM. Reason: By Request.</i>
01/10/2024	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ---- 1/9/2024 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann</i>

App-80

	<i>Lilly; Caitlin Mariel Miller</i>
01/29/2024	Motion for Rule to Show Cause Filed File Stamp: 01/29/2024 Filed By: Petitioner Lilly, Melissa Ann <i>Petition for Rule to Show Cause – af</i>
01/29/2024	Petition Filed File Stamp: 01/29/2024 Filed By: Petitioner Lilly, Melissa Ann <i>Petition for Restraining Order – af</i>
01/30/2024	Hearing (2:00 PM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2) <i>Atty Fees, Motions to Correct Error, Motion Relief from Judgment, Motions to Reconsider. 01/03/2024 Continued to 01/30/2024 By Request Lilly, Seth Adam</i> <i>Commenced and concluded</i> <i>Parties Present:</i> <i>Attorney Claussen, John Howard Nehf</i> <i>Attorney Miller, Caitlin Mariel</i> <i>Petitioner Lilly, Melissa Ann</i> <i>Respondent Lilly, Seth Adam</i>
01/30/2024	Notice to Court Filed

App-81

	File Stamp: 01/30/2024 Filed By: Respondent Lilly, Seth Adam <i>Progress Letter from Counseling Pathways LLC – af</i>
01/30/2024	Hearing Scheduling Activity <i>Hearing scheduled for 05/01/2024 at 9:00 AM.</i>
01/30/2024	Information Filed File Stamp: 01/30/2024 <i>Casy consent form for Seth – af</i>
01/30/2024	Hearing Scheduling Activity <i>Hearing originally scheduled on 05/01/2024 at 9:00 AM was rescheduled to 05/01/2024 at 9:00 AM Reason: Court's Own Motion.</i>
01/30/2024	Hearing Scheduling Activity <i>Hearing scheduled for 05/01/2024 at 9:00 AM was cancelled. Reason: Assigned in Error.</i>
01/30/2024	Hearing Scheduling Activity <i>Hearing scheduled for 05/01/2024 at 9:00 AM</i>
01/31/2024	Automated ENotice Issued to Parties <i>Hearing Scheduling Activity ---- 1/30/2024 : Erin Kiley Anderson;</i>

App-82

	<i>John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller Hearing Scheduling Activity ---- 1/30/2024 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Melissa Ann Lilly; Caitlin Mariel Miller</i>
01/31/2024	Order Issued <i>Order Signed: 01/31/2024 Petitioner Rule to Show Cause Hearing Set.</i>
01/31/2024	Order Issued <i>Order Signed: 01/31/2024 Granting Petitioner's Verified Petition for Restraining Order to be Set for Hearing.</i>
02/01/2024	Automated ENotice Issued to Parties <i>Order Issued ---- 1/31/2024 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Child Support Division; Megan N Iliff; Caitlin Mariel Miller Order Issued ---- 1/31/2024 : Erin Kiley Anderson;.John Howard Nehf Claussen; Kandace Brown; Child Support Division; Megan N Iliff; Caitlin Mariel Miller</i>
02/01/2024	Notice to Court Filed

App-83

	File Stamp: 02/01/2024 Filed By: Petitioner Lilly, Melissa Ann <i>Notice – af</i>
02/02/2024	Order Issued Order Signed: 02/02/2024 <i>Order on hearing conducted January 30, 2024.</i>
02/03/2024	Automated ENotice Issued to Parties <i>Order Issued ---- 2/2/2024 : Erin Kiley Anderson; John Howard Nehf Claussen; Kandace Brown; Child Support Division; Megan N Iliff; Caitlin Mariel Miller</i>
02/14/2024	Motion Filed File Stamp: 02/14/2024 Filed By: Respondent Lilly, Seth Adam <i>Motion to Advance Progression of Parenting Time – af</i>
02/22/2024	Order Issued Order Signed: 02/21/2024
02/23/2024	Automated ENotice Issued to Parties <i>Order Issued ---- 2/22/2024 : John Howard Nehf Claussen; Kandace Brown; Megan N Iliff; Caitlin Mariel Miller</i>

App-84

03/05/2024	Notice of Appeal Received File Stamp: 03/05/2024 <i>Notice of Appeal and copies of Judgment/Orders being appealed – af</i>
05/01/2024	CANCELED Hearing (9:00 AM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2) Assigned in Error
05/01/2024	Hearing (9:00 AM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2) <i>All pending issues-Petitioner's Motion for Rule to Show Cause and Petition for Restraining Order.</i>
01/06/2025	Review Hearing (9:00 AM) (Judicial Officer: Reddy, Lakshmi Y ;Location: Vigo Superior 2)
DATE	FINANCIAL INFORMATION

Petitioner Lilly, Melissa Ann	
Total Charges	205.00
Total Payments and Credits	205.00
Balance Due as of 3/5/2024	0.00

App-85

I, Bradley M. Newman, Clerk
of the Vigo Circuit Court and Ex-
officio Clerk of the Superior and
County Courts of Vigo County, do
hereby certify that this document is
a full, true and complete copy of

Chronological Case Summary

Cause No. 84D02-2206-DC-003750

As the same appears of record in the
files of this office of which I am legal
and lawful custodian.

IN WITNESS WHEREOF, I
have hereunto set my hand and
official seal, this 05 day of March,
2024.

/s/ Bradley M. Newman

CLERK OF THE VIGO CIRCUIT
COURT AND
EX-OFFICIO CLERK OF THE
SUPERIOR AND COUNTY
COURTS OF VIGO COUNTY

[Clerk Seal Unintelligible,
Reproduction Omitted]

App-86

Appendix C

[Filed: Jan. 23, 2023]

STATE OF INDIANA
VIGO SUPERIOR COURT
2023 TERM

IN RE: THE MARRIAGE OF) CAUSE NO.
MELISSA A. LILLY and) 84D02-2206-DC-
SETH A. LILLY) 003750

MEDIATED SETTLEMENT AGREEMENT

PURSUANT TO INDIANA CODE 31-15-2-13 and 31-15-2-17, THIS SETTLEMENT AGREEMENT is made by and between Petitioner, Melissa A. Lilly (hereinafter “Wife” and/or “Mother”), who comes in person, and Respondent, Seth A. Lilly (hereinafter “Husband” and/or “Father”), who comes in person, both of which parties were residents of Vigo County for three (3) months, and the State of Indiana, for period of six (6) months at the time Petitioner filed his Petition for Dissolution and arises out of the following circumstances:

- (A) The parties were married on July 2, 2016 and separated on or about June 21, 2022, at which time Wife filed her Petition for Dissolution of Marriage.
- (B) There were two (2) children born of the marriage, namely, Jayce Dane Lilly (DOB: 04/19/2017) and Hayes R. Lilly

App-87

(DOB: 02/27/2020). Petitioner is not now pregnant.

- (C) There is now pending in the Vigo Superior Court, Division 2, Terre Haute, Indiana, under Cause No. 84D02-2206-DC-003750 on the docket of said Court, Petition for Dissolution of the Marriage of the parties.
- (D) Both Husband and Wife, prior to filing of the Petition Dissolution of Marriage, had been citizens and residents of the State of Indiana for more than six (6) months last past and of Vigo County for more than three (3) months last past;
- (E) The parties, by negotiation and compromise, have agreed upon settlement of their rights in and to the property or interests owned by them jointly, severally or by the entirety, concerning all other matters hereinafter set forth, all on the following terms and provisions.

NOW, THEREFORE, THE PARTIES IN
TENDING TO BE LEGALLY BOUND DO HEREBY
AGREE AS FOLLOWS:

**I. DIVISION OF MARITAL PROPERTY AND
DEBT**

- A. **Real Property.** The parties are joint owners of the real property commonly known as 239 N. Crews Place, West Terre Haute, IN 47885, consisting of a house and other improvements on four (4) parcels of land. Wife shall be awarded said real property and shall be solely responsible for, pay and keep current, any and all indebtedness thereon, holding Husband harmless therefrom. Wife shall assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within six (6) months. In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband's request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value. If Husband does not purchase the property, then he shall execute a Quit Claim Deed relinquishing all interest that he may have in conjunction with the refinancing or loan assumption or sale. Quit Claim Deed to be prepared by Wife's attorney. Husband shall cooperate with any attempts to refinance, assume or sell the marital residence.
- B. **Household Furnishings, Household Goods and Personal Effects.** Household goods and personal effects in Wife's possession shall be declared the individual property of

App-89

Wife, with the exception of items listed on Exhibit A, which shall be declared the individual property of Husband. Upon Wife's written request, Husband shall retrieve said items within 60 days or same shall be forfeit to Wife. Household goods and personal effects in Husband's possession shall be declared the individual property of Husband. Law enforcement may be present at any transfers.

- C. **Vehicles.** Husband shall become the owner of the 2015 Chevrolet Silverado, and shall make any and all payments on the same, if any. Wife shall become the owner of the 2020 Polaris Ranger. Wife shall be responsible for the balance of the Polaris loan and she shall pay and keep it current. Further, Wife shall be declared the sole and individual owner of the 2018 Buick Enclave and the 2018 Jeep Compass and shall make any and all payments on the same. Each party shall cooperate to remove his/her name from the titling and/or insurance regarding any vehicle awarded to the other party herein.
- D. **Non-Retirement Accounts** The parties shall become the owners of any bank accounts in their individual name and shall close any joint accounts. Wife shall be declared the owner of the bank accounts held for the benefit of the minor children. Husband shall retain any accrued sick leave, time-off awards, travel-time awards and vacation-time awards through his employer.

E. **Retirement Accounts.**

1. Wife represents that she does not have any retirement accounts.
2. **Thrift Savings Plan.** Husband has a Thrift Savings Plan through his employer. Husband shall transfer one-half of the value of assets accrued from July 2, 2016 (date of marriage) to June 21, 2022 (date of separation), minus \$5000.00, and including earnings and losses (but not contributions) from June 21, 2022 to the date of physical separation of the assets. Said transfer shall be made via Retirement Benefits Court Order or other similar order, prepared by Wife's attorney. The Court shall retain continuing jurisdiction of this issue as may be necessary. It is clear to the parties that the earnings and losses shall be calculated prior to deducting the \$5000.00.
3. **Federal Employee Retirement System (FERS).** Wife shall share in Husband's gross monthly annuity under FERS. Wife shall also be entitled to a former spouse survivor annuity should Husband predecease Wife. The United States Office of Personnel Management shall pay the benefits awarded or assigned to Wife directly to Wife.

- a. **Husband Gross Monthly FERS Annuity**. Wife is entitled to and is hereby assigned and awarded and amount equal to fifty percent (50%) of the marital portion of Husband's gross monthly annuity determined as of Husband's date of retirement. The marital portion of Husband's gross monthly annuity shall be determined by multiplying the gross monthly annuity by a fraction, the numerator of which is the total number of months of Husband's creditable service under FERS during the marriage of the parties (from date of marriage to date of separation), and the denominator of which is Husband's total number of months of creditable service accrued under FERS, including military service credited to FERS, if any. The marriage of the parties began on July 2, 2016 and the parties separated on June 21, 2022. The Former Spouse's share of the Employee's gross monthly annuity shall be calculated without regard to any amounts that are withheld from the Employee's annuity for any reason, including amounts withheld for the purpose of providing Former Spouse with a survivor annuity. The United States Office of Personnel Management is directed to make payment directly to Former Spouse.

b. **Former Spouse Surviving Annuity.**

Under the authority of Section 8341(h)(1) of Title 5, United States Code, Wife is awarded a former spouse survivor annuity under FERS in an amount equal to a pro rata share of the maximum possible survivor annuity. The marriage began on July 2, 2016 and the date of separation is June 21, 2022. Further, the costs associated with providing this survivor spouse annuity coverage shall be divided equally between Wife and Husband.

F. **Life Insurance.** Husband shall remain the individual owner of any and all life insurance policies that he currently owns, and he shall maintain each of the minor children herein as beneficiaries under said policies, until the child becomes twenty-three (23) years of age. To the extent that he is financially able, he shall maintain said policies at their current level. Should Husband have subsequent children, or a subsequent spouse, he shall have the right to name them as beneficiaries under said policies as well, and the children hereunder shall then become pro-rata beneficiaries of said policies. Wife represents that she does not own any life insurance policies.

G. **Marital Debt.**

App-93

1. The parties agree to close any joint credit account or cooperate to remove the other as an obligor on any credit account one party wishes to keep. The parties agree to be responsible for all debt in their individual names. The parties agree to separate insurance policies immediately.
2. As set out hereinabove in Provision C, Wife shall be responsible for automobile loans for the Buick and the Jeep Compass. Husband's Chevrolet Silverado is believed to be owned free and clear. Wife shall be responsible for the loan on the Polaris.
3. Wife shall be responsible for any payments for the marital residence, including property taxes, utilities, maintenance, etc. As set out hereinabove in Provision A, the parties will work to remove Husband's name from any indebtedness associated with the marital residence.

- H. **Tax Returns.** The parties shall cooperate in the filing of joint federal and state income tax returns for tax year 2022 and shall equally share any refunds or tax due.

**II. CUSTODY, SUPPORT, VISITATION AND
OTHER CHILD-RELATED MATTERS**

- A. **Custody.** Mother shall have legal and physical custody of the children. The parties understand that they have a duty to discuss

major educational, healthcare and religious issues regarding the children with each other. If there is an emergency situation with respect to the health care of the child(ren) and time does not permit consultation between both parents, the parent who is physically with the child(ren) at that time shall have the right and obligation to make decisions regarding the emergency medical care of said child(ren). Pursuant to Indiana law, each parent shall have direct access to the medical and educational records of the children.

B. **Parenting Time.** Father's parenting time shall be supervised until a phase in can be accomplished as detailed below. Thereafter, the Indiana Parenting Time Guidelines shall apply.

1. **Supervised Breaking-In Period.**

Father's parenting time shall be subject to a phase-in period that shall be professionally supervised for the first eight (8) sessions at either FSA or Gibault. The cost of supervision shall be subsidized by funds through applicable Court programs, if available. If there are no funds available through Court programs, then Father shall be responsible for the cost of supervision. Upon completion of the professionally supervised phase-in period, Father shall have parenting time supervised by his parents or other family members at their home for at least one (1) month, and this

App-95

shall continue until Father completes the Batterer's Intervention Program and any other services ordered by the Court during the August 2022 hearing. The supervised parenting time with Father's parents shall increase in time and duration until the phase-in is complete. Following that, Indiana Parenting Time Guideline parenting time shall be in effect, provided there are no significant issues or concerns arising during the supervision period. The professional supervisor shall provide confidential reports to the parties' attorneys regarding the supervised visits.

2. **Counseling.** The parties shall immediately begin co-parenting counseling with Theresa White at In-Time Creative Counseling. Ms. White can be reached at 812-814-9463. The cost of co-parenting counseling shall be subsidized by funds through applicable Court programs, if available. If there are no funds available through Court programs, then the parties may agree to utilize a different counselor that accepts Father's insurance. Father shall pay any uninsured and/or out-of-pocket expenses of counseling, unless otherwise agreed. Furthermore, the parties shall engage in individual counseling.
3. **Relocation.** When either parent considers a change of residence, they must comply with their rights and responsibilities

pursuant to the relocation statute. Each party represents that they are aware of their rights and responsibilities under the relocation statute (Ind. Code § 31-17-2.2). If Father relocates to an area more than twenty (20) miles from the marital residence, Father shall be responsible for the cost of transportation.

4. **Extracurricular Activities.** Father's parenting time shall not take precedence over extracurricular activities such as school sport games, practices or clubs.
5. **Location.** Father's parenting time shall not occur at the marital residence.

- C. **Child Support, Healthcare Expenses and Extracurricular Expenses.** Father shall pay child support in the amount of \$150.00 per week, commencing the Friday following the date that the Court approves this agreement and said agreement is entered into the Chronological Case Summary. Support shall be paid via Income Withholding Order, prepared by Mother's attorney. Until Father sees that support is being withheld from his paycheck, he shall make payments through the Clerk of the Court or the Indiana State Central Collection Unit. Father shall insure that the minor children are covered by healthcare insurance available through his employer, provided that it is available at reasonable cost. Father shall be responsible

App-97

for 50% and Mother shall be responsible for 50% of annual uninsured medical, dental, optical, orthodontic, psychiatric and psychological expenses for the minor children. Reimbursement/payment for these expenses shall occur within 14 days after presentation of the expense, after insurance has been applied. Father shall pay daycare expenses. The parties shall equally share school expenses and supplies, daycare supplies and reasonable extracurricular expenses.

- E. **Claiming Children as Dependents for Tax Purposes.** That unless otherwise agreed, Father shall claim Hayes and Mother shall claim Jayce as a dependent on their federal and state income tax returns. When one child can no longer be claimed, the parties shall alternate claiming the remaining child, with Mother claiming in the first alternating year. In order to claim the child in his allotted years, Father must be 95% current in his child support obligation for the applicable tax year by January 31 of the year following the applicable tax year.

V. MISCELLANEOUS PROVISIONS

- A. **Mutual Release.** Husband and Wife hereby release all claims and rights which either ever had, now has or might hereafter have against the other party by reason of their relationship

App-98

as husband and wife or otherwise, including any claim arising from tortious conduct, excepting all the claims or rights of each party created and outstanding against the other pursuant to the terms of this Agreement.

- B. **Income Tax Audit.** Each party agrees to immediately advise the other and copy to the other any notice received, after the parties' separation, from the Indiana Department of Revenue or the Internal Revenue service concerning an audit by the respective taxing authority(ies) of income tax returns filed by the parties during the marriage or notifying the parties of income tax liability owed. The party failing to so advise and inform the other party shall be responsible for attorney fees and accounting fees incurred by the party entitled to notice who failed to receive such notice.
- C. **Disclosure.** Each party represents to the other that this Agreement allocates between the parties all assets and debts known to each party. If additional assets or debts are hereafter discovered, such omitted asset(s) shall be relinquished by the party who knew or should have known of its/their existence and failed to disclose it to the other party who did not know of its/their existence. Any such omitted debt shall become the responsibility of the party who knew or should have known of its existence and failed to disclose it.

App-99

- D. **Fully Advised.** Each of the parties hereto has had the opportunity to consult with an attorney, if they so choose, in order to be fully separately, and independently apprised and advised of their respective legal rights, remedies, privileges and obligations, arising out of the marriage relation or otherwise, and has, in addition thereto, had the opportunity to have made such independent inquiry and investigation with respect to all of the same as they deemed necessary to be fully informed. Each party acknowledges that he or she has had the opportunity to consult with and/or sought the advice of legal counsel and other professional persons, such as, but not limited to, accountants and other counselors, as he or she desires, and with the advice of such professionals, each party has made his or her own determinations as to the valuation of all assets and liabilities.
- E. **Full Understanding.** The parties hereto each warrant and represent to the other that he or she fully understands all of the terms, covenants, conditions, provisions and obligations incumbent upon each of them by virtue of this Agreement to be performed or contemplated by each of them hereunder, and each believes the same to be fair, just, reasonable, and to his or her respective individual best interests. Each party has read the Agreement and finds it to be in accordance with his or her understanding.

- F. **Modification and Waiver.** A modification or waiver of any of the provisions of this Agreement shall be effective only if (i) made in writing and executed with the same formality as this Agreement, and (ii) approved by a Court of competent jurisdiction. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.
- G. **Execution of Additional Documents.** Each of the parties shall, at the request of the other, promptly execute and deliver to the other, any and all deeds, bills of sale, instruments of assignment, waivers of claiming dependency exemption and other documents which the other may reasonably require for the purpose of giving full force and effect to the provisions of this Agreement.
- H. **Prompt Dissolution.** This Agreement is expressly conditioned upon its approval by the Court upon granting the parties' dissolution. This Agreement shall be of no effect unless the dissolution is granted.
- I. **Property Rights.** Except as otherwise specifically provided in the Settlement Agreement, all money, rights, property assets, and liabilities of every nature, real or personal, tangible or intangible, now owned by either Husband or Wife shall become the separate

and exclusive property of the party now owning it, divested of any right of dower, courtesy, descent, or encumbrances, or any other right of the other party heretofore existing or arising out of the marital relationship of the parties. Any property owned as joint tenants or as tenants by the entireties which is not expressly covered by the provisions of this Agreement shall, upon the entering of the Decree of Dissolution of Marriage, vest in Husband and Wife, equally, as tenants in common.

- J. **After Acquired Debts.** Each party is responsible for any debt or liability incurred by him or her after the date of separation, each party holding the other harmless for its payment.
- K. **Future Responsibility.** Neither party shall charge upon the credit of the other, without specific permission to do so. Neither party shall contract any indebtedness or incur any liability for which the other may be held liable.
- L. **Hold Harmless.** Each party agrees that in undertaking to pay certain obligations contained in the Agreement, including receiving any property subject to any debt or encumbrances, that party shall fully defend and hold the other harmless for principal, interest, court costs and reasonable attorney's fees, together with any judgment rendered against the innocent party by virtue of the

party obligated to pay failing to fulfill that obligation and an action being brought against the innocent party.

- M. **Division of Assets and Liabilities.** Each party agrees that, in light of all of the circumstances and factors enumerated in Ind. Code 31-15-7-5, this Agreement is a fair and equitable division of the marital estate. Each party has discussed this division with separate counsel and each agrees to the division.
- N. **Attorney Fees.** Each of the parties shall be solely responsible for paying his and her respective attorney's fees and costs, if any, incurred in connection with the negotiation and preparation of this Agreement and obtaining the final Decree. Neither party shall have any obligation whatsoever for any attorney's fees or costs incurred by the other party.
- O. **Legal Representation.** Husband and Wife each acknowledges entering freely and voluntarily into this Agreement, each having been separately represented and advised by independent counsel of his or her choosing in the negotiation for and preparation of this Agreement. Each party and counsel has had an opportunity to conduct a complete examination and review of all related records and documents, and each party has had this Agreement fully explained to him or her by

counsel and is fully aware of its contents and its legal effects.

- P. **Documents**. Each party shall immediately execute and deliver to the other all documents necessary to carry out the terms and intent of this Agreement.
- Q. **Waiver of Beneficiary Status**. Absent an express provision in this agreement to the contrary, each party waives any beneficiary interest that he or she may have in any life insurance policies, annuities, brokerage accounts, pay-on-death bank accounts, individual retirement accounts, or other instruments containing a beneficiary designation that are now owned by the other party.
- R. **Complete Agreement**. Both parties acknowledge that no representations, warranties, promises, covenants or undertakings of any kind have been made to him or her as an inducement to enter into this Agreement. This Agreement is intended to be, the complete agreement of the parties.
- S. **Default of Performance**. If, after the Decree has been entered, either party defaults in the performance of any of the obligations of this Agreement, or of any order or judgment, the other party shall recover his or her reasonable attorney's fees and costs.

- T. **Future Interpretation.** Headings are convenience only. They are not part of the Agreement and shall not be used in its construction. With respect to the form of the Agreement, both parties assume joint responsibility for the form and composition of each paragraph, and they agree that this Agreement shall be interpreted as though each of the parties participated equally in the composition of each and every part of the Agreement. This Agreement is not to be strictly construed for or against either of the parties. It shall be interpreted simply and fairly to both parties. If any portion of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.
- U. **Applicable Law.** The parties agree that any interpretation of this Agreement, or any legal actions to enforce this Agreement, shall be governed by the applicable laws of the State of Indiana as they exist on the date of the execution of this Agreement, with the exception that any modifications in matters pertaining to child support and related issues, shall be governed by the laws of the State of Indiana applicable at the time of any such modification action.
- V. **Mail and Correspondence.** Each of the parties agree to promptly forward by mail to the other all mail and correspondence

hereafter received which is addressed to the other.

- W. **Electronic Mail and Social Media.** Each party shall receive his and her respective email address and ownership of social media or other on-line accounts used primary by the respective party. Each party will cooperate with the other in taking steps which may be necessary to transfer ownership of email addresses and/or on-line accounts to the proper owner. Neither party will use an email address, social media account or on-line account belonging to the other party.

SO AGREED:

/s/ Melissa A. Lilly

Melissa A. Lilly,
Petitioner

/s/ Seth A. Lilly

Seth A. Lilly,
Respondent

/s/ Caitlin M. Miller

Caitlin M. Miller
Attorney for
Petitioner

/s/ Karen Swopes

Karen Swopes
Attorney for
Respondent

/s/ Phillip I. Adler

Phillip I. Adler
Mediator

APPROVAL OF COURT

THIS SETTLEMENT AGREEMENT, executed by Melissa A. Lilly and Seth A. Lilly, was submitted to the Court in conjunction with the parties' submission to the Court of a Verified Petition for Summary Disposition and Waiver of Final Hearing. The Court, being duly advised, now approves the above and foregoing Settlement Agreement and based upon the representations of the parties stated in said Agreement now finds that the Agreement was entered into fairly, without fraud, duress or undue influence and was fair and equitable. The Settlement Agreement is hereby identified as "Settlement Agreement" and approved by the Court in the Decree of Dissolution of Marriage granted in this cause and incorporated into said Decree of Dissolution as a part thereof.

SO ORDERED this 1/24/2023

/s/ Lakshmi Reddy

Judge

Distribution to:

Caitlin M. Miller

Karen Swopes

App-107

STATE OF INDIANA
VIGO SUPERIOR COURT
2023 TERM

IN RE: THE MARRIAGE OF) CAUSE NO.
MELISSA A. LILLY and) 84D02-2206-DC-
SETH A. LILLY) 003750

Exhibit A

Kitchen

Toybox, was Husband's when he was a child

Living Room

Recliner

LG TV

TV cabinet- 4 cube

Garage

Chest Freezer

Half of Meat in Freezer

Tool Chest (after he returns the tool chests stored at
his parents for Melissa to keep)

Blue Chest

½ Dewalt 20 Volt tools

½ Hand Tools

Miter Saw

Circular Saw

1/5 Trail Cameras (rest split between Melissa, boys
and Masyn)

1/5 Ammunition (rest split between Melissa, boys
and Masyn)

Seth's Gun Cases (Melissa, boys and Masyn keeps
theirs and Melissa keeps her family's)

App-108

Crocks

Concession Stand

1/ 2 Hand Tools

½ Garden Tools

Metal table (ok but it was her dad's)

Chainsaw Chains

John Deere Umbrella - (Melissa does not know what this is but Seth can have if it is at house)

Log Tongs

Log Chain

1/2 Trapping Supplies

Lean-to

1/ 2 Fishing Supplies

2 Milk Cans

Transmission

½ Misc. Tools

Chop Saw

Stored at Melissa's Parents

Crocks

Concrete tools - not at her parents, but he can have

Outside

Jon Boat

JD Push Mower

Husqvarna Zero Turn Mower

White Riding Lawnmower

John Deere Riding Mower

Husqvarna 455 Rancher chainsaw

App-109

Husqvarna 460 Rancher chainsaw

Blue Generator

Chipper Shredder

Floor Jack

1/4 Miscellaneous Hunting Items

Older Keurig Coffee maker

App-110

Appendix D

[Filed: Aug. 28, 2023]

STATE OF INDIANA
VIGO SUPERIOR COURT
2023 TERM

IN RE: THE MARRIAGE OF) CAUSE NO.
MELISSA A. LILLY and) 84D02-2206-
SETH A. LILLY) DC-003750

**VERIFIED PETITION FOR RULE TO SHOW
CAUSE AND PETITION FOR ATTORNEY FEES**

Comes now the Petitioner, Melissa Lilly (hereinafter “Mother”), in person and by counsel, and petitions the Court for an Order requiring Respondent Seth Lilly (hereinafter “Father”), to show cause why he should not be held in contempt for failing to comply with the Orders approved by this Court. Mother alleges Father is in contempt as follows:

1. This Court dissolved the marriage of the parties on January 24, 2023.
2. The parties entered into a Mediated Settlement Agreement, the agreement was approved by the Court on January 23, 2023 regarding the division of Marital Property and Debt.
3. The January 23, 2023 Mediated Settlement Agreement set forth that Mother shall become

the owner of the parties' house and land and that she shall assume the mortgage loan or obtain refinancing to remove Husband from mortgage loan within six (6) months.

4. Although Mother has obtained the necessary financing within the 6 months, Father is refusing to comply with executing the documents required to remove himself from the mortgage.
5. Mother has repeatedly requested compliance from Father to no avail.
6. Father has purchased a new residence since the date of divorce and there is no reason for him to obstruct Mother's ability to take over the mortgage other than his attempt to maintain control over Mother.
7. Mother was scheduled to close on August 25, 2023, but due to Father's unwillingness to cooperate that closing was canceled.
8. Mother requests attorney fees in having to bring this action.

WHEREFORE, Mother prays that the Court set this matter for hearing, and upon said hearing grant to her the relief prayed for hereinabove and all other relief just and proper in the premises.

App-112

I hereby affirm under the penalties for perjury that the above foregoing representations are true and correct based upon my information and belief.

/s/ Melissa Lilly

Melissa Lilly, Petitioner/Mother

Respectfully submitted,

/s/ Caitlin M. Miller

Caitlin M. Miller, #28636-87

HASSLER KONDRAS MILLER LLP

100 Cherry Street

Terre Haute, IN 47807

(812) 232-9691

miller@hkmlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2023, a copy of the foregoing pleading was served electronically upon the following persons:

John N. Claussen

/s/ Caitlin M. Miller

Caitlin M. Miller

App-113

Appendix E

[Filed: Aug. 30, 2023]

STATE OF	)	IN THE VIGO COUNTY
INDIANA	)	SUPERIOR COURT
	)SS:	2023 TERM
VIGO COUNTY)	

IN RE THE
MARRIAGE OF:
MELISSA A.
LILLY, and
SETH A. LILLY

CAUSE NO. 84D02-
2206-DC-003750

**VERIFIED PETITION FOR RULE TO SHOW
CAUSE AND TO ENFORCE PREVIOUS ORDER
AND PETITION FOR ATTORNEY FEES**

Comes now, the Respondent, Seth A. Lilly, by and through Counsel, John N. Claussen, and hereby submits his Verified Petition for Rule to Show Cause and to Enforce Previous Order and Petition for Attorney Fees, and respectfully states as follows:

1. That, on January 24, 2023, this Court approved the parties Mediated Settlement Agreement, wherein, Wife was awarded the parties' marital residence and was to either assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within six (6) months. In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of

App-114

the agreement, then, upon Husband's request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value.;

2. That, pursuant to the Summary of Findings (attached hereto as "Exhibit A") provided to undersigned Counsel by opposing counsel, Wife waited until July 21, 2023, exactly 2 days prior to the 6-moth deadline, to even submit her application for financing and was only generically "recommended" "eligible".
3. That, pursuant to an August 16, 2023 email from Wife's Loan Officer, Kevin Kraus, (attached hereto as "Exhibit B") which was provided to undersigned Counsel by opposing Counsel, the first step in any loan process is to get approved/eligible with the automated underwriting system based on the applicant's application. He further explains that additional steps must be taken in order to verify the information that the Petitioner submitted with her application is factually accurate. Although Mr. Kraus states that this step had been completed, he did not offer the date on which it was completed. Further, Mr. Krause states that flood and homeowner's insurance still need to be updated before underwriting can finish the process;

4. That, Wife submitted her Verified Petition for Rule to Show Cause and Petition for Attorney Fees on August 28, 2023 wherein stating that her attempt to refinance resulted in failed closing; however, she blamed this failure on lack of action taken by Husband, but has not presented any evidence of the same;
5. That, Wife has failed to assume the mortgage loan and she has failed to obtain refinancing within the specified six (6) month deadline;
6. That, Husband requests this Court to enforce its previous Order regarding the sale of the marital residence and that he be allowed the right of first refusal; and
7. That, Father has incurred attorney fees in connection with the filing of this motion.

WHEREFORE, the Respondent, Seth A. Lilly, moves the Court for an Order setting this matter for hearing, and for all other relief that is just and proper in the premises.

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE ABOVE FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DocuSigned by:

/s/ Seth A. Lilly

FC8A895ADA594D7...

Seth A. Lilly, Respondent

App-116

Respectfully submitted,

/s/ John N. Claussen

John N. Claussen (#26794-84)

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been e-filed and served upon the following parties, and via United States Postal Service, Postage Prepaid those parties not capable of e-serving, this 30th day of August 2023:

Caitlin M. Miller

/s/ John N. Claussen

John N. Claussen (#26794-84)

Attorney for Respondent

Claussen Law Office

PO Box 2239

Terre Haute, IN 47802

812-299-1900

App-117

Appendix F

[Filed: Aug. 30, 2023]

STATE OF	)	IN THE VIGO COUNTY
INDIANA	)	SUPERIOR COURT
	)SS:	2023 TERM
VIGO COUNTY)	

IN RE THE
MARRIAGE OF:
MELISSA A.
LILLY, and
SETH A. LILLY

CAUSE NO. 84D02-
2206-DC-003750

RESPONDENT'S RESPONSE TO
PETITIONER'S VERIFIED PETITION FOR
RULE TO SHOW CAUSE AND PETITION FOR
ATTORNEY FEES

Comes now, the Respondent, Seth A. Lilly, by and through Counsel, John N. Claussen, and hereby submits his response to Petitioner's "*Verified Petition for Rule to Show Cause and Petition for Attorney Fees*", and respectfully states as follows:

1. That, on August 28, 2023, the Petitioner filed her Verified Petition for Rule to Show Cause and Petition for Attorney Fees;
2. That, said Petition asserts that the Petitioner has obtained the necessary financing within the 6-month deadline (July 23, 2023) outlined in the parties' January 23, 2023 Settlement Agreement;

3. That, pursuant to the Summary of Findings (attached hereto as “Exhibit A”) provided by opposing counsel, the Petitioner waited until July 21, 2023, exactly 2 days prior to the 6-month deadline, to even submit her application for financing and was only generically pre-approved;
4. That, pursuant to an August 16, 2023 email from Petitioner’s Loan Officer, Kevin Kraus, (attached hereto as “Exhibit B”) which was provided to undersigned Counsel by opposing Counsel, the first step in any loan process is to get approved/eligible with the automated underwriting system based on the applicant’s application. He further explains that additional steps must be taken in order to verify the information that the Petitioner submitted with her application is factually accurate. Although Mr. Kraus states that this step had been completed, he did not offer the date on which it was completed. Further, Mr. Krause states that flood and homeowner’s insurance still need to be updated before underwriting can finish the process. Mr. Kraus in no way asserts that the Petitioner’s application was ever in jeopardy of being closed out due to any action or lack thereof by the Respondent;
5. That, Petitioner’s Verified Petition for Rule to Show Cause and Petition for Attorney Fees is without merit; and

6. That, Father has incurred attorney fees in connection with Mother's meritless Petition and should be awarded reasonable fees associated with the same.

WHEREFORE, the Respondent, Seth A. Lilly, moves the Court for an Order setting this matter for hearing, and for all other relief that is just and proper in the premises.

Respectfully submitted,

/s/ John N. Claussen

John N. Claussen (#26794-84)

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been e-filed and served upon the following parties, and via United States Postal Service, Postage Prepaid those parties not capable of e-serving, this 30th day of August 2023:

Caitlin M. Miller

/s/ John N. Claussen

John N. Claussen (#26794-84)

Attorney for Respondent

Claussen Law Office

PO Box 2239

Terre Haute, IN 47802

812-299-1900

App-120

Appendix G

**STATE OF INDIANA
VIGO SUPERIOR COURT
DIVISION TWO
TERM 2023**

IN RE: THE MARRIAGE OF	CAUSE NO.
MELISSA ANN LILLY and	84D02 2206
SETH ADAM LILLY	DC 3750

ORDER APPOINTING COMMISSIONER

The Court hereby appoints Attorney Jon Spurr to serve as a Commissioner so that he may sign any documents on behalf of Seth Adam Lilly which is for the sole purpose of allowing Melissa Ann Lilly to refinance the marital residence located at 293 N. Crews Place, West Terre Haute, Indiana 47885. The closing shall take place prior to October 1, 2023, but should take place as soon as possible.

There is no need for Seth Lilly to be present at the refinance closing since the Court has appointed a Commissioner to be present and the Court seeks to minimize any contact between these parties. Whatever fees are charged by Attorney Jon Spurr shall be paid by Seth Lilly since the necessity to appoint a Commissioner has been his unwillingness to cooperate.

SO ORDERED ON September 1, 2023

App-121

/s/ LAKSHMI REDDY

LAKSHMI REDDY, JUDGE

Distribution:

All parties of record

Jon Spurr-Appointed Commissioner

VIGO COUNTY INDIANA

SEAL

CIRCUIT & SUPERIOR

COURTS

TL

App-122

Appendix H

**STATE OF INDIANA
VIGO SUPERIOR COURT
DIVISION TWO
TERM 2023**

IN RE: THE MARRIAGE OF	CAUSE NO.
MELISSA ANN LILLY and	84D02 2206
SETH ADAM LILLY	DC 3750

ORDER

Court conducted a two day hearing on August 28th and 31st, 2023. Petitioner/Mother, Melissa Lilly by Counsel, Caitlin Miller both appear in person. Respondent/Father, Seth Lilly by Counsel, John Claussen both appear in person. Guardian Ad Litem, Erin Anderson appears in person. Witnesses are sworn and evidence is heard.

The main purpose of this hearing was to address Father's parenting time and whether the restrictions can be lifted. Mother also wanted her Motion to Modify Child Support and Verified Motion for Rule to Show Cause to Enforce Previous Order and request for attorney fees addressed.

In reviewing the CCS, it appears that both parties have filed Rules to Show Cause. Mother filed the first Rule to Show Cause and request for attorney fees on March 21, 2023. This was over the issue of receiving the title to the Polaris Ranger. Father filed a Response on April 13, 2023, asserting

that he had attempted to provide Mother with the vehicle title. The Mediated Settlement Agreement was approved by this Court on January 24, 2023. Mother was awarded the Polaris Ranger, and the parties were to cooperate in removing his/her name from the vehicles awarded, but no time frame was provided for when this needed to be done. According to AppClose, there were several communications between the parties on February 8, 2023, regarding the Polaris Ranger title and who should pay the insurance. Mother stated that the loan was paid off but would not be paying the insurance until she received the title. There never was a resolution that day on how Mother would receive the signed title. From this Court's perspective, if the parties could put aside their differences this could have easily been handled by Father simply signing the title and dropping the signed title to either his attorney or Mother's attorney if they were not capable of exchanging in person. This certainly should not have required the assistance of attorneys when there are two very highly intelligent people involved. According to the Agreement, since the responsibility was upon Father to have his name removed, then the obligation was upon Father to get this accomplished. Court GRANTS Mother's Rule to Show Cause on this issue.

On August 28, 2023, Mother filed another Verified Petition for Rule to Show Cause and Petition for Attorney Fees. This was over the marital home refinance issue. The pertinent portion of the Mediated Settlement Agreement on this issue provides the following:

“Wife shall assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within six (6) months. In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband’s request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value. If Husband does not purchase the property, then he shall execute a Quit Claim Deed relinquishing all interest that he may have in conjunction with the refinancing or loan assumption or sale. Quit Claim Deed to be prepared by Wife’s attorney. Husband shall cooperate with any attempts to refinance, assume or sell the marital residence.”

Public policy in Indiana favors marital settlement agreements See *Rothschild v. Devos*, 757 N. E. 2d 219, 223 (Ind. Ct App. 2001). There is the expectation that “freedom of contract will. . .produce mutually acceptable accords, to which parties will voluntarily adhere”. *Waterfield v. Waterfield*, 61

N.E.3d 314 (Ind. Ct. App. 2016). Indiana Code §31-15-2-17 encourages parties to enter into amicable settlement agreements on issues of property disposition, child support, child custody, and maintenance; the statute also provides that once the settlement agreement is approved by the court, the terms of the agreement are incorporated and merged into the dissolution decree. “Dissolution decrees entered into by agreement of the parties implicate contract principles.” *Kizziah v. Kizziah*, 651 N. E. 2d 297, 299 (Ind. Ct. App. 1995). “Unless the terms of the agreement are ambiguous, they will be given their plain and ordinary meaning. “*Bailey v. Mann*, 895 N.E.2d 1215 (Ind. 2008) “This gives parties more flexibility in crafting dissolution decrees, and they may agree to provisions which a trial court could not order;...”. *Kizziah*, 651 N.E.2d at 299. A party may not take advantage of an error that he/she “commits, invites, or which is the natural consequence of his own neglect or misconduct”. *Reinhart v. Reinhart*, 938 N.E.2d 788 (Ind. Ct. App. 2010).

The agreement provides that Mother shall assume the mortgage or refinance to remove Husband’s name within six (6) months which means it was supposed to be accomplished by July 24, 2023. The evidence submitted demonstrates that on July 21, 2023, Mother’s Counsel sent Father’s Counsel an email advising that Mother “has obtained the financing for the resident...” On July 31, 2023, at 8:48 a.m., Father’s Counsel inquires whether Mother has been able to obtain financing and than states that Father “would like to purchase the marital residence for the appraisal amount.” Father contends

that Mother did not refinance within six (6) months and so he is entitled to purchase the home. However, the Court does not find that to be a plain reading of the terms of the agreement. If Mother was unable to refinance within six (6) months, then **upon Father's request**, the property is placed for sale and then Father has the right of first refusal to purchase the marital residence at fair market value, not the appraised value. This Court's interpretation is that Father only had a right to purchase after the house was placed for sale and then he had a right of first refusal. However, the Court sees no evidence that Father ever requested that the house be placed for sale so he does not yet have an option for first right of refusal at the fair market value. Since Mother has refinanced and was prepared to close on August 25, 2023, and is still prepared to close, the Court orders that she proceed in the refinancing so that Father's name can be removed. Because the Court is concerned that Father will not cooperate to ensure this is accomplished, by separate Order the Court has appointed Attorney Jon Spur to be a Commissioner to sign on behalf of Father so that this matter can be resolved without any further delay and/or conflict. If there are any fees incurred by Mr. Jon Spur in serving as Commissioner, than those fees must be paid by Father. Mother is to ensure that the refinance closing takes place immediately and sees no reason why it cannot be completed by October 1, 2023. If there is some unforeseeable circumstance beyond Mother's control, she should request a short extension.

The Court also observes that the evidence reveals that Father already purchased a home back in April of 2023. And yet, several months later he challenges whether Mother obtained financing and suggests he wishes to purchase the home. His attempt to keep Mother from being able to close on the refinance and ultimately seek to prevent the children from remaining in the home that they have been raised in does not create a favorable impression aside from all the other issues that have arisen in this case.

Mother's Verified Rule to Show Cause is GRANTED and the Court addresses attorney fees below.

The main issue between the parties is parenting time. After the last hearing in July, the Court made only slight modifications to Father's parenting time. At the hearing in July, Mother requested that Father's parenting time be suspended. As stated in the July Order, while the Court understood Mother's concerns, that Father was trying to skirt the Court Order, and that Father's participation in services did not necessarily mean that he was learning from those services, the Court also has to "balance whether further restrictions is in the children's best interest or if it can cause further trauma to the children. it is often difficult to ascertain if the children are harmed more by Father's behavior or by restricting his parenting time. It is important for the long term emotional health of children to have a good healthy relationship with both parents and this Court must do what it can to

promote the relationship. The Court can only create a platform and environment for this to occur, but it is up to Father to follow through." Father's parenting time since the previous hearing in July has been from 10:00 a.m. on Saturday to 10:00 a.m. on Sunday, supervised by family members.

After the last hearing and learning that the supervisors had not been providing proper supervision, the Order required each of them to be present for this hearing. Based upon the testimony of several supervisors, it appears that they may not have been timely provided a copy of the Court Order and may have been misguided by Father. That appears to still be the case. It also appears that some of the supervisors have their own viewpoints of what is fair and fail to recognize that they have a responsibility to follow the Court Orders after signing the Consent to Jurisdiction. The Court has concerns that some of the supervisors simply do not understand their obligations and/or simply do not believe they have to comply. It is also clear that Father's parenting time was not supervised at all times. It is also clear that Father again attempted to take the children to a location two (2) hours away, although ultimately he did not follow through with this after his Counsel was contacted.

Two professional supervisors testified. Both stated that they had no concerns with Father during his parenting time and that he behaved appropriately. Mother's Counsel pointed out that during these visits, Father often bought gifts and that the visits took place at a bounce house or other

fun places and were not during a normal time where any stress was involved. It is fairly common for the Court to see a parent have the ability to behave during the short-term supervised parenting times with professionals because they know they are being carefully observed.

The GAL testified at length regarding who she met with and how frequently and about the contents of her Report and Recommendations. In summary, the GAL testified that she does not believe that Father will cause physical harm to the children, but that he will impair their emotional health and development. The GAL asserts that the children love Father and that Father has not made any threats to harm the children. The GAL also observed a couple of supervised visits and agrees that they went well. She has also observed Father taking care of the children in stressful situations and found that he handled the situation appropriately. The GAL had the following recommendations:

- (1) That the adults involved in this matter shall not speak about the court matters, or the contents of this report with the minor children.
- (2) That Seth Lilly continues supervised visitation with an appropriate supervisor.
- (3) That Seth Lilly may take the children to different places, provided he follows all rules regarding prior notification of any out-of-state travel and supervision. To clarify, this is not because his GAL feel south has complied with the boundaries

that have been set. In fact, this GAL has concerns because that has continuously managed to circumvent the court orders, and this GAL is concerned, this could be taken at South being “rewarded” for doing so. However, if there is proper supervision, this GAL does not want to continue restricting Jase and Hayes, since they enjoy going various places with her father.

- (4) That Hayes enter some form of counseling immediately to address his anger. In addition, the party shall both ensure Hayes has a regular nap time.
- (5) That the family began family, counseling, to be completed with a counselor that will reference all information, parentheses, including outside information, such as court orders and parentheses, and can assist with ongoing questions regarding custody and parenting time on a long-term basis.
- (6) That Melissa Lilly remained the sole legal custodian of the children.

Mother’s testimony has been consistent and was similar to the things she has testified to before. She admits that she knows that Father loves the children and that the children love their Father, but she has concerns for Father’s anger issues and that he may try to harm the children just to get back at her and also concerns that he engages in disparaging comments about Mother. Mother also testified that right after she filed Petition seeking for Father’s parenting time to be supervised, Father made a

report to DCS which resulted in Jase having to pull his pants down and be photographed which he was distraught over. When asked by Father's Counsel what Father needed to do, Mother stated: (1) control his behavior; (2) not speak ill of Mother; and (3) follow terms that they have agreed to.

Father's testimony has also been fairly consistent. He currently lives in West Terre Haute by himself in a home he purchased back in April of 2023. He completed the batterer's intervention at FSA Counseling Center and is currently seeing Tim Bennet. He also completed Choices Consulting True Thoughts program. He is also seeing Trisha May for anger management. Father has made clear that he does not believe he needs all these services. He also does not think that the children have been traumatized by his behavior, but is worried that they might have been traumatized. Father testifies that the most traumatizing thing that the kids have been through is being separated from him for the past eight (8) months.

The most helpful evidence in assisting this Court to reach a decision was the testimony from Dr. Jason Warner who performed psychological evaluations of both parents. The Court does not memorialize the contents of Dr. Warner's written psychological evaluation. At one point, Dr. Warner testified that Father is incapable of having any discussions with Mother that do not end up in conflict. As the Court stated on the record, what is extremely disappointing is that after the Court had admonished Father for his behavior in several videos

that were played during the July hearing, Father conveyed to Dr. Warner statements that justified his behavior or blamed Mother. Such is consistent with Father's inability to accept responsibility for his own behavior and his contribution to the current situation. Dr. Warner states in his report that Father's "decisions are a choice." The most significant comment in the report is the following: "This Evaluator is concerned that the Court will waste a significant amount of funds attempting to help [Father] understand how his actions contribute to his situation." He also does not believe that Father has changed his behavior even with his family supervising his parenting time. Although Dr. Warner did not conduct a custody evaluation and has not met the children, the Court inquired of Dr. Warner his opinion of what parenting time arrangement would be in the children's best interest and/or cause them the least trauma. Initially, Dr. Warner suggested shorter amounts of time with the children to minimize the harmful effects of Father's behavior. However, he could not say for certain whether this was better than longer periods of time with supervision. Dr. Warner did also raise the question of how much money would it take for Father to be willing to spend to repair the relationship before he began changing his behavior for financial reasons.

Equally helpful in assisting this Court reach a decision was the testimony of Trisha May who is providing counseling to Father which is focused on anger management. On July 26, 2023, after the first session, Ms. May sent an email to the Family Navigator which provided the following:

App-133

Hello, I met with Seth today. He was not a nice man. He was very angry during the session and had to be told to calm it down. He did not bring the videos as what was ordered and told me Melissa can bring them to me as he is tired of doing all this. He said he's ready to just sign his rights over for the kids. He does not want to do anything at this anymore. He is scheduled for August 10, 2023. My office is closed next week so that is the reason for the longer time between appointments. I have a strong personality and met him with resistance, and he did not like that. I let him know that I had expectations that he comes into the next appointment with a changed attitude. I will let you know how it goes at the next session. Let me know if you have any questions. Thank you.

The Court's concern with this email is that it establishes Father's pattern of behavior as it seems that the Family Navigator has had a similar experience with Father based upon a previous report filed.

At the next session, Father did bring the videos as ordered by the Court. Ms. May testified that she did review the videos as ordered by the Court, but did not review all of them as she felt she

saw enough to recognize that there was extreme family conflict, lots of negative emotions between the parties, and she was concerned for the children. She discussed with Father his behavior but stated that Father lacked the ability to demonstrate that he had insight into how his actions created a negative environment for the family and his children. According to Ms. May, Father downplayed his behavior in their first and second session, but this dissipated towards the end of the 2nd session and in the 3rd session, he showed more insight. At this time, Ms. May does not believe that Father has remorse and he is still angry over most interactions with Mother, as well as being angry over treatment and duplicative services. However, Ms. May also testified that she and Father have reached an understanding and that he is on a path of progress. She is still willing to work with Father. Of importance is that Father did not describe any anger towards the children and he had expressed missing the children and enjoying spending time with them.

The Court inquired of Ms. May if she had any concerns if Father continued to engage in the type of behavior witnessed on the videos or that she witnessed during her first session with him. Ms. May testified that if Father continued to engage in such behavior, then she would be worried about the emotional development of the children.

In making decisions about parenting time, the Court is required to give the foremost consideration to the best interests of the child. *See Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). Indiana

Courts recognize that the right of a noncustodial parent to spend time with his or her children is a “precious privilege”. *Duncan v. Duncan*, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006). *See also Appolon v. Faught*, 796 N.E.2d 297, 300 (Ind. Ct. App. 2003) (“The right of a non-custodial parent to visit with his or her children is a sacred and precious privilege, and ideally, a child should have a well-founded relationship with both parents.”) “Extraordinary circumstances must exist to deny parenting time to a parent, which necessarily denies the same to the child.” *Perkinson*, 989 N.E.2d at 765.

With regards to Entitlement to Parenting Time Rights, Indiana Code §31-17-4-1 provides the following:

- (a) A parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child’s physical health or significantly impair the child’s emotional development.
- (b) The court may interview the child in chambers to assist the court in determining the child’s perception of whether parenting time by the noncustodial parent might endanger the child’s physical health or significantly impair the child’s emotional development.

(c) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

Pursuant to Indiana Code Section 31-17-4-2:

The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.

Although the statute uses the word "might" endanger, the appellate courts have interpreted that to mean "would" endanger a child's physical health or emotional development. *Meisberger v. Bishop*, 15 N.E.3d 653, 660 (Ind. Ct. App. 2014). In having reviewed the videos played regarding Father's behavior in the past, this Court certainly has concerns that Father's behavior might, can, or would endanger the children's physical health and/or emotional development/well-being if such behavior continued. Tricia May, a licensed clinical social work for 23 years, testified that if Father continued to engage in the behavior that he exhibited in the videos and during her first session with him, then

she has concerns for the emotional development of the children. Dr. Warner, a psychologist and licensed therapist, stated in his Report that he has concerns “that the Court will waste a significant amount of funds attempting to help Father understand how his actions contribute to his situation.” A significant sum has already been spent on services for which Father does not believe he requires. In addition, Dr. Warner made clear that Father is incapable of having conversations with Mother that do not end up in conflict and Tricia May indicated that Father uses intimidation towards Mother. The Court’s own conclusion is that changing Father’s behavior through counseling is a long-term process.

This Court is still faced with the same dilemma of determining what parenting time arrangement is appropriate. What kind of a parenting time arrangement should Father have that will serve the best interest of the minor children, ensure a healthy relationship, and have the least risk of further trauma to the children. Suspending all parenting time does not appear to be a solution for several reasons. Mother has made clear that the children love their Father and she wants them to have a good relationship with Father. Additionally, research suggests that children who do not have a relationship with their father are at higher risk for behavioral problems, social adjustment, anxiety and unhappiness. The Court has to balance these risk factors with the trauma that can be endured as a result of Father’s behavior in the presence of the children. On the other hand, long term supervision

also does not appear to be an appropriate solution to provide the children with some sense of normalcy.

The Court viewed the videos presented during the July hearing and those were only small snippets of what occurred in the household. It is impossible to believe that Father's anger and tirades did not have a negative impact on the children and leave them with some trauma. The best the Court can do is to implement restrictions to help minimize this behavior and the impact on the children. During the videos, Mother mentioned Father's blood glucose levels and being concerned about him driving and going to work. Dr. Warner mentioned in his report that Father has Type 1 Diabetes and has a heightened risk for depression, anxiety and mood swings. Dr. Warner stated that the diabetes "is not the factor to his chosen behavior but might be a contributing factor to the intensity of his behavior." What the Court observed during the videos is someone consumed with rage and anger.

While the Court cannot say whether such behavior was intensified by uncontrolled blood sugar, the Court sees this problem to be akin to a parent having a drug and/or alcohol substance abuse issue. In those instances, the Court imposes monitoring restrictions to ensure a child's safety and the Court sees no reason not to do so in this case involving uncontrolled diabetes. Ensuring that Father has controlled blood sugar levels will at least minimize this leading to an increased intensity of emotional outbursts and/or anger. For this reason, the Court requires Father to remain under the care of his

doctor treating him for diabetes and requires him to continue using the electronic monitoring system that he is currently using. ***He has thirty (30) days to submit a letter to this Court from his treating physician stating that Father has been prescribed an electronic blood glucose monitoring system and that he will continue to use such monitoring system and state whether Father's blood glucose levels have been reasonably controlled within the past thirty (30) days.*** Father shall be required to submit such letter every six (6) months. This will be a condition to the Court lifting the parenting time restrictions and Father receiving unsupervised parenting time. ***If Father fails to be compliant in this regard, the Court may very well require him to provide actual blood glucose levels before the commencement of parenting time and during his parenting time.*** The Court would prefer not to be that intrusive, but will do so to protect the safety and emotional development of a minor child.

Another condition imposed by the Court before the parenting time restrictions can be lifted is the requirement that Father remain in anger management counseling with Tricia May. Once he has completed a minimum of ten (10) sessions and Tricia May submits a Report to the Family Navigator that Father has completed 10 sessions, is actively participating, and is progressing forward in a positive direction, then Father may transition to the next phase whereby some parenting time restrictions are lifted. Father is cautioned that if he does not remain in anger management counseling with Tricia

May, his parenting time will be restricted again to prevent any harm to the children.

Father's parenting time will continue to be every other weekend from 10:00 a.m. on Saturday to 10:00 a.m. on Sunday supervised by the family members that signed the Consent to Jurisdiction. However, supervision **cannot** be provided by Paternal Grandfather or his brother-in-law, Dusty Hagler as the Court has no reason to believe they are willing to be compliant and provide the requisite supervision. Paternal Grandfather and Dusty Hagler may be present during Father's parenting time, however, they simply cannot be the individual responsible for supervision. Father is cautioned that if he violates this provision, the Court will schedule a Rule to Show Cause and impose sanctions which can include jail time.

Once Father has submitted a letter from his treating physician as described above, completed ten (10) sessions with Tricia May along with a Report that he is compliant and participating, then Father may have unsupervised parenting time from 10:00 a.m. on Saturday to 10:00 a.m. on Sunday. Once Father has completed sixteen (16) sessions with Tricia May and she submits a Report that Father has completed 16 sessions, is actively participating and moving forward in a positive direction, a letter from a physician that Father's diabetes is under control, and there has been no substantial/material issues, then Father will transition to unsupervised parenting time from Friday at 6:00 p.m. to Sunday at 6:00 p.m. every other weekend. Father must still

continue to participate in anger management counseling with Tricia May until the Court receives a Report that such is no longer necessary. Failure to comply will be considered a violation of a Court Order and subject to sanctions.

While Father is receiving every other weekend of parenting time, he is not being awarded Indiana Parenting Time Guidelines until the Court sees that the parenting time has taken place without issues and Father continues with services. When there are school breaks like spring break, Thanksgiving, Christmas, etc. when it is Father's year to receive additional time, he will only get his weekends extended by one more additional overnight. The Court believes this to be appropriate and consistent with Dr. Warner's recommendation that there be short periods of unsupervised parenting time. After one year has passed from when Father begins his every other weekend unsupervised parenting time, then the Court will consider transitioning to the traditional Indiana Parenting Time Guidelines. Until then, the Court will not risk jeopardizing the children's emotional health by spending long periods of time with Father until he can demonstrate that his behavior is under control.

Father may attend one extra-curricular activity of the children during the week with a family supervisor who has consented to this Court's jurisdiction. However, he may not go anywhere near Mother or communicate with Mother during the extra-curricular activities either directly or indirectly through a third party or through the communication

app. He may simply attend the event, wave to his children and give them a hug with a conversation lasting no more than ten (10) minutes with the family/friend supervisor present. If the Court learns that he violates these instructions, spends more than ten (10) minutes with the children, and/or says anything inappropriate during these times or that a supervisor is not present, the Court will impose further restrictions and possibly impose sanctions. After Father has completed ten (10) sessions with Tricia May, Father may attend the one extra-curricular activity per week without any supervision. However, all the other terms will continue to apply regarding contact with Mother and the 10 minute restriction with the children.

Father may speak with the children every evening between 5:00 pm to 7:00 p.m. This conversation is Father's opportunity to focus on only the children. Mother is not to speak during these phone conversations nor shall Father attempt or request to have Mother speak and/or participate in the conversation. If Father is engaging in inappropriate communications that Mother believes are harmful to the children, then she may simply hang up the phone and does not need to engage Father in a conversation or discourage his communication style. Because Mother wants the children to have a good relationship with Father, the Court trusts that Mother will only hang up the phone when it is necessary due to concerns for the children's emotional well-being. If she finds an occasion to hang up the phone, then she should simply send a message on AppClose explaining the

reason for her decision and there should be no further communication on this issue between the parties. Father should discuss the matter with Tricia May and/or Tim Bennett.

From this day forward, and for at least one year from the date of this Order, the Court's goal is to keep the communication between the parties at a bare minimum and to that which is absolutely essential. The Court also does not want the parties to be anywhere near each other to avoid the chance of their being any conflict either in or outside the presence of the children. The Court can only hope that as more time passes, the conflict will subside. The attorneys are directed to assist the parties in coordinating an exchange of the children so that the parties do not need to see or talk to one another. This is NOT a recommendation, but a mandatory instruction. They may require the assistance of family members and/or should reach out to the Family Navigator for her assistance for any community resources. ***Neither party has the authority to modify this provision regardless of how they believe they are doing or getting along.***

Along these lines, the parties need to further minimize their communications on AppClose. The parenting time schedule is a strict one and there can be no changes in this first twelve months because the parties are not capable of co-parenting at this time. The only communications necessary is to provide a schedule of extra-curricular activities and if there is a schedule change or financial issues regarding expenses related to the children. Or, if there are

medical appointments made and the outcome, but both parents absolutely cannot be present at the same appointment. Father can only be present for such medical appointments if Mother is unavailable. Both parties are cautioned that if the Court learns that they are engaging in or attempting to engage in communications that are not absolutely essential, then they will be admonished and possibly sanctioned.

While Father inquired about joint legal custody, such is entirely impossible at this time. The Court takes this opportunity to advise the parties of a recent decision issued by the Indiana Court of Appeals in *Tonevich v. Parkins*, 2022 Ind. App. Lexis 301 (Ind. Ct. App. September 6, 2022). In this case, the appellate court specifically stated that

“Where the parties have made child-rearing a battleground, joint legal custody is not appropriate. *Carmichael v. Siegel*, 754 N.E.2d 619, 635 (Ind. Ct. App. 2001). Indeed, this court has observed that ‘to award joint legal custody to individually capable parents who cannot work together is tantamount to the proverbial folly of cutting the baby in half in order to affect a fair distribution of the child to competing parents.’ *Rasheed v. Rasheed*, 142 N.E.3d 1017, 1022 (Ind. Ct. App. 2020) (quoting *Milcherska v. Hoerstman*, 56 N.E. 3d 634, 641 (Ind. Ct. App. 2016)).”

Id. This recent appellate court case demonstrates that this Court does not have a legal basis to award Father with joint legal custody based upon the pattern of behavior of the parties. That is not to say that things cannot change in the future and that they may learn to get along and communicate better for the best interest of their children.

Mother also filed for a modification of child support. The parties reached an agreement in January of 2023 wherein Father's child support was \$150.00/week. Father was responsible for keeping the children on his health insurance plan and both parties were equally responsible for any uninsured medical expenses. In addition, Father was responsible for the daycare fees and the parties were to equally share in expenses related to school, supplies, daycare supplies, and reasonable extra-curricular activity expenses. This method has resulted in entirely too much communication and cooperation between the parties as evidence indicated that Mother was constantly sending receipts to Father for expenses incurred.

The Court finds Mother's income to be \$948.75/week and Father's base income (excluding bonuses) to be \$1,488.88/1488.8814week. Attached is the Court's child support obligation worksheet which includes the parenting time that Father has had since approximately April which is no more than one overnight every other weekend. Father's child support is modified from \$150/week to \$356/week retroactive to the date that the Petition to Modify

App-146

Child Support was filed, that being April 12, 2023. As such, for the 20 weeks that have lapsed, Father has a child support arrearage of \$4,120.00 through August 31, 2023. If Father wants to be able to claim Hayes on his 2023 tax returns, he must make this child support arrearage current by no later than January 31, 2024. The parties will continue to share uninsured medical expenses equally, that being 50/50.

As Father will continue to have only one overnight every other weekend until he completes a sufficient number of anger management sessions, his child support will continue to be \$356/week. Once Father begins having unsupervised parenting time every other weekend, then his child support will then be reduced to \$320/week. The parties should submit an agreement to this effect when he begins having this increased supervised parenting time along with an amended Income Withholding Order.

The child support order of \$356/week and later \$320/week requires Mother to pay for all day care expenses and supplies, all school expenses and supplies, and all controlled living expenses. If there are extra-curricular activities, then those expenses shall be shared equally but should not require communication on this issue more than a few times a year.

Father does work significant over-time, but the Court cannot require him to do so. However, the children should benefit from Father's increased income. To avoid conflict over how the money is used

or whether the children are benefitting from this irregular income, the Court has found that a reasonable solution is to have a percentage of Father's irregular income placed into a savings account for the children for their benefit when they turn 18. Pursuant to the Indiana Child Support Guidelines, Father's basic child support ratio to the combined income is 0.15. As such, Father is ordered to place 0.15 of his irregular/bonus income into a savings account for the children. Each child is entitled to $\frac{1}{2}$ and there should be separate savings account which must be restricted accounts that cannot be withdrawn without Court Order. Mother is responsible for setting up the account and providing Father with the account names and account numbers so he can make deposits. To minimize communication between the parties, these deposits should be made twice a year on or about January 15, 2023, and July 15, 2023. As Father has already earned \$115,309 in irregular income in 2023, he is responsible for depositing a total of \$17,296 or \$8,648 into each savings account. Father is provided sixty (60) days to deposit this money in the children's savings accounts and Mother is required to provide Father with the necessary information so the money can be deposited. To be clear, this must be a restricted account so that neither party may make withdrawals. Father is required to provide Mother with proof of his irregular income/bonuses so that she has confirmation that Father is depositing the correct amount in the children's restricted savings account.

The Court will not order co-parenting counseling as it does not believe it will be beneficial for this family at this time. However, hopefully in the future that can be an option. Both Jase and Hayes should participate in individual counseling. However, this is not intended to be an additional burden upon Mother as she has another child. She should consult with the Family Navigator to see if she can obtain assistance with transportation or she may delay the children's counseling until after her daughter graduates.

Mother has requested attorney fees for filing a Rule to Show Cause on the issue of obtaining the title for the Polaris vehicle, on the issue of closing on the refinance of the marital residence, and for having to defend Father's pleadings and responses which are alleged to be frivolous and groundless.

Pursuant to Indiana Code Section 34-52-1-1:

- (a) In all civil actions, the party recovering judgment shall recover costs, except in those cases in which a different provision is made by law.
- (b) In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:
 - (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
 - (2) continued to litigate the action or defense after the party's claim or

defense clearly became frivolous,
unreasonable, or groundless;
or
(3) litigated the action in bad faith.

(c) The award of fees under subsection (b) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice.

On the one hand, Father's numerous pleadings were a response to the pleadings filed by Mother. However, it would have been more fruitful for Father to have just corrected the error and filed a Response that the matter had been resolved. As stated above, with regards to the Polaris title issue, Father could have simply signed the title and found a way to get it to Mother or through the attorneys. Several of the other response pleadings appeared to be appropriate under the circumstances. That being said, several hearings that needed to be conducted were because of Father's own behavior which has required Mother to expend significant sums in attorney fees that she does not have based upon her income. An emergency hearing was required after the Father's day incident back in August of 2022. Then, after the parties reached an Agreement in January of 2023, a significant amount of time was spent with the attorneys in Chambers to reach an informal resolution. Then, on July 7, 2023, a 3 ½ hour hearing

App-150

was conducted which involved watching videos of Father's behavior which supported restricted parenting time requiring supervisions. The, these two days on August 28th and 31st, 2023, involved listening to some similar testimony, but also that of professionals who confirmed that there is a problem with Father's behavior that he appears to still be unwilling to acknowledge. It is unreasonable for Mother to continue incurring costs related to Father's behavior that is contributing to the issues at hand.

Mother's Counsel submitted an Attorney Fee Affidavit providing that from January 24, 2023, through the current date, which the Court will presume includes the two days of hearings in August, Mother has incurred \$23,053.23 in fees after a billing reduction of around \$10,000.00. Mother's Counsel charges \$275/hour which is standard in this community. The Affidavit provides that the fees relate to "continued intervention because of [Father's] behavior, filings related to the same, communication with providers and Court appointed providers and neutral parties related to the same, preparing and participating in four (4) hearings, etc." The evidence demonstrates that Father earns significantly more money than Mother and that he can continue to earn more through working overtime to afford continued litigation.

Indiana Code §31-15-10-1 provides that:

(a) The court periodically may order a party to pay a reasonable amount for

the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.

The trial court has the "inherent authority to make allowances for attorney fees... in the interest of seeing that equity and justice is done on both sides." *Bertholet v. Bertholet*, 725 N.E.2d 487, 501 (Ind. Ct. App. 2000). In doing so, the trial court "must consider the resources of the parties, their economic condition, the ability of the parties to engage in gainful employment and to earn adequate income, and such other factors as bear on the reasonableness of the award." *Id.* (quoting *Barnett v. Barnett*, 447 N.E.2d 1172, 1176 (Ind. Ct. App. 1983). *See also Van Wieren v. Van Wieren*, 858 N.E.2d 216, 224 (Ind. Ct. App. 2006). "By providing for the award of attorney fees in dissolution actions, the legislature has deemed it appropriate that a party, who otherwise could not afford an attorney in connection with dissolution proceedings, have access to an attorney's services by providing that the other party is responsible for paying the attorney fees." *Beeson v. Christian*, 594 N.E.2d 441, 443 (Ind. 1992). "[T]he statute permitting the award of attorney fees serves

to insure equal access to the courts despite the relative financial conditions of the parties.” *Id.* (quoting *P.B. v. T.D.*, 561 N.E.2d 749, 750 (Ind. 1990)). “[W]hat constitutes a reasonable attorney fee is a matter largely within the trial court’s discretion.” *Dougherty v. Leavell*, 582 N.E.2d 442, 443 (Ind. Ct. App. 1991).” In determining what is ‘reasonable,’ the court may consider such factors as the hourly rate, the result achieved, the responsibility in dealing with a sizeable or complicated estate, and the difficulty of the issues.” *Dougherty*, 582 N.E.2d at 443.

The resources of the parties was obtained through evidence presented on the issue of child support. While Father’s Counsel did not question Mother’s Counsel on the reasonableness of her attorney fees and the hourly rate charged, due to the late evening hours of the second day, Father was also not given an opportunity to do so. To ensure compliance with the process, a hearing is set ONLY for the purpose of determining whether Mother’s attorney fees and hourly rate incurred were reasonable. As such, Mother’s Counsel should submit a detailed invoice with confidential information redacted. A hearing on attorney fees is scheduled for December 6, 2023 at 8:30 a.m. with thirty (30) minutes allotted and the Court will NOT address any other issues at that time. A review hearing to determine if Father can be transitioned to traditional Indiana Parenting Time Guidelines is scheduled for January 6, 2025, at 9:00 a.m. with one (1) hour allotted. If the parties need more time than one hour,

App-153

they should notify the Court in advance so that more time can be allotted without delaying the hearing.

SO ORDERED ON September 8, 2023

/s/ LAKSHMI REDDY

LAKSHMI REDDY, JUDGE

Distribution:

All parties of record

CASY Family Navigator

Child Support

VIGO COUNTY INDIANA

SEAL

CIRCUIT & SUPERIOR

COURTS

DE

Worksheet - Child Support Obligation

Each party shall complete that portion of the worksheet that applies to him or her, sign the form and file it with the court. This worksheet is required in all proceedings establishing or modifying child support.

IN RE: The Marriage of Melissa Lilly and Seth Lilly	CASE NO: 84D02-2206- DC-3750
	FATHER: Seth Lilly
	MOTHER: Melissa Lily

CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)

Children	DOB	Children	DOB
Jayce	04/29/2017	Hayes	02/27/2020
	Father	Mother	
1. WEEKLY GROSS INCOME	\$1,488.00	\$949.00	
A. Subsequent Child Multiplier Credit (.065 .097 .122 .137 .146 .155 .164 .173)	\$0.00	\$0.00	
B. Child Support (Court Order for Prior Born)	\$0.00	\$0.00	
C. Child Support (Legal Duty for Prior Born)	\$0.00	\$0.00	

App-155

D. Maintenance Paid	\$0.00	\$0.00	
E. WEEKLY ADJUSTED INCOME (WAI) Line 1 minus 1A, 1B, 1C, and 1D	\$1,488.00	\$949.00	
2. PERCENTAGE SHARE OF TOTAL WAI	61.06%	38.94%	
3. COMBINED WEEKLY ADJUSTED INCOME (Line 1E)			\$2,437.00
4. BASIC CHILD SUPPORT OBLIGATION Apply CWAI to Guideline Schedules	\$261.95	\$167.05	\$429.00
A. Weekly Work-Related Child Care Expense of each parent	\$0.00	\$200.00	\$200.00
B. Weekly Health Insurance Premium - (Children's portion)			\$71.00
5. TOTAL CHILD SUPPORT OBLIGATION (Line 4 plus 4A and			\$700.00

App-156

4B)			
6. PARENT'S CHILD SUPPORT OBLIGATION (Line 2 times Line 5)	\$427.42	\$272.58	
7. ADJUSTMENTS			
() Obligation from Post-Secondary Education Worksheet Line J	+\$0.00	+\$0.00	
(X) Payment of work-related child care by each parent (Same amount as Line 4A)	-\$0.00	-\$200 .00	
(X) Weekly Health Insurance Premium (Children's portion)	-\$71.00	-\$0.00	
(X) Parenting Time Credit for 0-51 overnights.	-\$0.00	-\$0.00	
8. RECOMMENDED CHILD SUPPORT OBLIGATION	\$356.00		

I affirm under penalties for perjury that the

App-157

foregoing representations are true.
Father:_____ Mother:_____ Dated:_____
UNINSURED HEALTH CARE EXPENSE CALCULATION
A. Custodial Parent Annual Obligation: (CSOW Line 4) \$429.00 + (PSEW § Two, Line 1) \$0.00 = \$429.00 x 52 weeks x .06 = \$1338.48
B. Balance of Annual Expenses to be Paid: (Line 2) 61.06% by Father; 38.94% by Mother

Worksheet - Child Support Obligation

Each party shall complete that portion of the worksheet that applies to him or her, sign the form and file it with the court. This worksheet is required in all proceedings establishing or modifying child support.

IN RE: The Marriage of **CASE NO:** 84D02-2206-
Melissa Lilly and Seth DC-3750
Lilly **FATHER:** Seth Lilly
 MOTHER: Melissa Lily

**CHILD SUPPORT OBLIGATION WORKSHEET
(CSOW)**

Children	DOB	Children	DOB
Jayce	04/29/2017	Hayes	02/27/2020
		Father	Mother
1. WEEKLY GROSS INCOME	\$1,488.00	\$949.00	
A. Subsequent Child Multiplier Credit (.065 .097 .122 .137 .146 .155 .164 .173)	\$0.00	\$0.00	
B. Child Support (Court Order for Prior Born)	\$0.00	\$0.00	
C. Child Support (Legal Duty for Prior Born)	\$0.00	\$0.00	

App-159

D. Maintenance Paid	\$0.00	\$0.00	
E. WEEKLY ADJUSTED INCOME (WAI) Line 1 minus 1A, 1B, 1C, and 1D	\$1,488.00	\$949.00	
2. PERCENTAGE SHARE OF TOTAL WAI	61.06%	38.94%	
3. COMBINED WEEKLY ADJUSTED INCOME (Line 1E)			\$2,437.00
4. BASIC CHILD SUPPORT OBLIGATION Apply CWAI to Guideline Schedules	\$261.95	\$167.05	\$429.00
A. Weekly Work-Related Child Care Expense of each parent	\$0.00	\$200.00	\$200.00
B. Weekly Health Insurance Premium - (Children's portion)			\$71.00
5. TOTAL CHILD SUPPORT OBLIGATION (Line 4 plus 4A and			\$700.00

App-160

4B)			
6. PARENT'S CHILD SUPPORT OBLIGATION (Line 2 times Line 5)	\$427.42	\$272.58	
7. ADJUSTMENTS			
() Obligation from Post-Secondary Education Worksheet Line J	+\$0.00	+\$0.00	
(X) Payment of work-related child care by each parent (Same amount as Line 4A)	-\$0.00	-\$200 .00	
(X) Weekly Health Insurance Premium (Children's portion)	-\$71.00	-\$0.00	
(X) Parenting Time Credit for 71-75 overnights.	-\$36.38	-\$0.00	
8. RECOMMENDED CHILD SUPPORT OBLIGATION	\$320.00		

I affirm under penalties for perjury that the

App-161

foregoing representations are true.
Father:_____ Mother:_____ Dated:_____
UNINSURED HEALTH CARE EXPENSE CALCULATION
A. Custodial Parent Annual Obligation: (CSOW Line 4) \$429.00 + (PSEW § Two, Line 1) \$0.00 = \$429.00 x 52 weeks x .06 = \$1338.48
B. Balance of Annual Expenses to be Paid: (Line 2) 61.06% by Father; 38.94% by Mother

App-162

Appendix I

STATE OF) IN THE VIGO COUNTY
INDIANA) SUPERIOR COURT
)SS: 2023 TERM
VIGO COUNTY)

IN RE THE
MARRIAGE OF:
MELISSA A.
LILLY, and
SETH A. LILLY

CAUSE NO. 84D02-
2206-DC-003750

**MOTION TO CORRECT ERROR OR,
IN THE ALTERNATIVE, MOTION TO
RECONSIDER**

Comes now, the Respondent, Seth A. Lilly, by and through Counsel, John H. N. Claussen, moves the court to correct errors in the *Order* issued on September 8, 2022³ after a two day hearing held on August 28 and August 3, 2023. In support of his Motion, Father states as follows:

PARENTING TIME

1. This Court's finding on the bottom of page 3 of the Order is not supported by the evidence:

"Father's parenting time since the previous hearing in July has been from 10:00 a.m. on Saturday to 10:00 a.m. on Sunday... "

App-163

2. However, evidence at the hearing in August was that Father exercised parenting time every other Saturday at 10:00 a.m. until 6:00 p.m. on Sunday and;

3. This Court's order dated July 14, 2023, stated:

“Father shall continue to have supervised parenting time every other weekend from Saturday at 10:00 a.m. to Sunday at 6:00 p.m.... “

4. Respondent believes that this court inadvertently erred by concluding, on bottom of page 9 of the Order, that:

“Father's parenting time will *continue* to be every other weekend from 10:00 a.m. on Saturday to 10:00 a.m. on Sunday... “

5. Respondent believes that the Court intended to order that “Father's parenting time will *continue* to be every other weekend from 10:00 a.m. on Saturday to 6:00 p.m. on Sunday... “and that the only difference between the parenting time schemes in the second to last paragraph and the last paragraph on page 9 was meant to be the supervision requirement.

CHILD SUPPORT

6. The Order modified Father's child support “from \$150/week to \$356/week retroactive to the date that the Petition to Modify Child

Support was filed, that being April 12, 2023.” It also established a “child support arrearage of \$4,120.00 through August 31, 2023” for the weeks [20] that lapsed. The Order “requires Mother to pay for all day care expenses... “after August 31, 2023 and on its worksheet the Court used the amount of \$200 per week allocated to Mother.

7. The court was correct in finding that Father *had been* “responsible for the daycare fees...”
8. This court erred by concluding father’s retroactive support obligation amount (between April 12, 2023 and August 31, 2023) be \$356 per week because it did not take into consideration that Father was the party paying the childcare expenses during that period of time.
9. Father testified that he had paid \$160.00 per week the entire time for Hayes’ childcare. $\$160.00 \times 20 = \$3,200.00$. Father testified that for much of the time he paid \$150 per week for Jase’s childcare but that he paid \$42.50 after Jase began school in August but that the total he had paid for Jase was approximately \$1,500.00. Therefore, the total Father paid was approximately \$4,700.00 which, over 20 weeks, is \$235.00 per week.
10. Father has attached to this Motion a child support obligation worksheet that

recommends a support obligation in the amount of \$143.00 for the 20 weeks between April 12, 2023, and August 31, 2023. Because father's retroactive support obligation amount should be \$143.00, he should not have an arrearage but instead a credit in the amount of \$140.00 (20 x \$7) as of August 31, 2023. Attached to this Motion is aforementioned CSW as Exhibit 1.

SAVINGS ACCOUNT/IRREGULAR INCOME

11. This court made a finding on page 13 that is not supported by the evidence in that it incorrectly identified Father's irregular income when it stated:

“Father has already earned an \$115,309.00 in irregular income in 2023...”

12. Father's paystub shows that his gross amount of income is \$115,309, which takes into account his overtime pay *and* his regular time pay. Father's irregular income is his overtime pay which is stated on his paystub to be in the amount of \$68,749.00.
13. Therefore, Father should only be required to deposit a total of \$10,312.00 (.15 x \$68,749.00).

MARITAL RESIDENCE

14. This Court's finding that on the top of page 3 that "the Court sees no evidence that Father ever requested that the house be placed for sale so he does not yet have an option for first right of refusal at the fair market value" is not supported by the evidence.
15. This court recognizes, on page 2 of the Order, that on July 31, 2023, at 8:48 a.m. Father's Counsel inquired about the marital residence by stating Father "would like to purchase the marital residence for the appraisal amount." This court erred by failing to interpret Father's inquiry as his request to sell the property because stating that he wants to purchase it is the same as requesting it be sold, but to him.
16. Therefore, Father requests that the marital residence be sold and that it be sold to Father on his option to purchase at fair market value.

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DocuSigned by:

/s/ Seth A. Lilly

Seth A. Lilly, Respondent

Respectfully submitted,

/s/ John N. Claussen

App-167

John N. Claussen (#26794-84)
Attorney for Respondent

REQUESTS FOR RELIEF

Father requests that the errors described above be corrected. In the alternative, Father requests that her requests be reconsidered, and for all other appropriate relief.

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing have been e-filed and served upon the following parties, and via United States Postal Service, Postage Prepaid those parties not capable of e-serving, this 8th day of October, 2023:

Caitlin M. Miller

/s/ John N. Claussen
John N. Claussen (#26794-84)
Attorney for Petitioner

Claussen Law Office
P.O. Box 2239
Terre Haute, IN 47802
812-299-1900

Worksheet - Child Support Obligation

Each party shall complete that portion of the worksheet that applies to him or her, sign the form and file it with the court. This worksheet is required in all proceedings establishing or modifying child support.

IN RE: The Marriage of
Melissa Ann Lilly and
Seth Adam Lilly

CASE NO: 84D02-2206-
DC-003750

FATHER: Seth Lilly
MOTHER: Melissa Lily

CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)

Children	DOB	Children	DOB
Jayce	04/29/2017	Hayes	02/27/2020
	Father	Mother	
1. WEEKLY GROSS INCOME	\$1,488.00	\$949.00	
A. Subsequent Child Multiplier Credit (.065 .097 .122 .137 .146 .155 .164 .173)	\$0.00	\$0.00	
B. Child Support (Court Order for Prior Born)	\$0.00	\$0.00	
C. Child Support (Legal Duty for Prior Born)	\$0.00	\$0.00	

App-169

D. Maintenance Paid	\$0.00	\$0.00	
E. WEEKLY ADJUSTED INCOME (WAI) Line 1 minus 1A, 1B, 1C, and 1D	\$1,488.00	\$949.00	
2. PERCENTAGE SHARE OF TOTAL WAI	61.06%	38.94%	
3. COMBINED WEEKLY ADJUSTED INCOME (Line 1E)			\$2,437.00
4. BASIC CHILD SUPPORT OBLIGATION Apply CWAI to Guideline Schedules	\$261.95	\$167.05	\$429.00
A. Weekly Work-Related Child Care Expense of each parent	\$235.00	\$0.00	\$235.00
B. Weekly Health Insurance Premium - (Children's portion)			\$71.00
5. TOTAL CHILD SUPPORT OBLIGATION (Line 4 plus 4A and			\$735.00

App-170

4B)			
6. PARENT'S CHILD SUPPORT OBLIGATION (Line 2 times Line 5)	\$448.79	\$286.21	
7. ADJUSTMENTS			
() Obligation from Post-Secondary Education Worksheet Line J	+\$0.00	+\$0.00	
(X) Payment of work-related child care by each parent (Same amount as Line 4A)	-\$235.00	-\$0.00	
(X) Weekly Health Insurance Premium (Children's portion)	-\$71.00	-\$0.00	
(X) Parenting Time Credit for 0-51 overnights.	-\$0.00	-\$0.00	
8. RECOMMENDED CHILD SUPPORT OBLIGATION	\$143.00		

I affirm under penalties for perjury that the

foregoing representations are true.

DocuSigned by:

-FC8A895ADA594D7...

Father: /s/ Mother: Dated:

**UNINSURED HEALTH CARE EXPENSE
CALCULATION**

A. Custodial Parent Annual Obligation: (CSOW Line
4) \$429.00 + (PSEW § Two, Line 1) \$0.00 = \$429.00 x
52 weeks x .06 = \$1338.48

B. Balance of Annual Expenses to be Paid: (Line 2)
61.06% by Father; 38.94% by Mother

App-172

Appendix J

STATE OF)
INDIANA)
)SS: 2023 TERM
VIGO COUNTY)

IN RE THE
MARRIAGE OF:
MELISSA A.
LILLY, and
SETH A. LILLY

CAUSE NO. 84D02-
2206-DC-003750

**AMENDED MOTION TO CORRECT ERROR
PURSUANT TO TRIAL RULE 59 OR, IN THE
ALTERNATIVE, MOTION TO RECONSIDER**

Comes now, the Respondent, Seth A. Lilly, by and through Counsel, John H. N. Claussen, moves the court to correct errors in the *Order* issued on September 8, 20223, pursuant to Indiana Trial Rule 59, after a two day hearing held on August 28 and August 3, 2023. In support of his Motion, Father states as follows:

PARENTING TIME

1. This Court's finding on the bottom of page 3 of the Order is not supported by the evidence:

"Father's parenting time since the previous hearing in July has been from 10:00 a.m. on Saturday to 10:00 a.m. on Sunday... "

App-173

2. However, evidence at the hearing in August was that Father exercised parenting time every other Saturday at 10:00 a.m. until 6:00 p.m. on Sunday and;

3. This Court's order dated July 14, 2023, stated:

“Father shall continue to have supervised parenting time every other weekend from Saturday at 10:00 a.m. to Sunday at 6:00 p.m.... “

4. Respondent believes that this court inadvertently errored by concluding, on bottom of page 9 of the Order, that:

“Father's parenting time will *continue* to be every other weekend from 10:00 a.m. on Saturday to 10:00 a.m. on Sunday... “

5. Respondent believes that the Court intended to order that “Father's parenting time will *continue* to be every other weekend from 10:00 a.m. on Saturday to 6:00 p.m. on Sunday...”and that the only difference between the parenting time schemes in the second to last paragraph and the last paragraph on page 9 was meant to be the supervision requirement.

CHILD SUPPORT

The Order modified Father's child support “from \$150/week to \$356/week retroactive to

the date that the Petition to Modify Child Support was filed, that being April 12, 2023.” It also established a “child support arrearage of \$4,120.00 through August 31, 2023” for the weeks [20] that lapsed. The Order “requires Mother to pay for all day care expenses... “after August 31, 2023 and on its worksheet the Court used the amount of \$200 per week allocated to Mother.

7. The court was correct in finding that Father *had been* “responsible for the daycare fees... “
8. This court erred by concluding father’s retroactive support obligation amount (between April 12, 2023 and August 31, 2023) be \$356 per week because it did not take into consideration that Father was the party paying the childcare expenses during that period of time.
9. Father testified that he had paid \$160.00 per week the entire time for Hayes’ childcare. $\$160.00 \times 20 = \$3,200.00$. Father testified that for much of the time he paid \$150 per week for Jase’s childcare but that he paid \$42.50 after Jase began school in August but that the total he had paid for Jase was approximately \$1,500.00. Therefore, the total Father paid was approximately \$4,700.00 which, over 20 weeks, is \$235.00 per week.
10. Father has attached to this Motion a child support obligation worksheet that

recommends a support obligation in the amount of \$143.00 for the 20 weeks between April 12, 2023, and August 31, 2023. Because father's retroactive support obligation amount should be \$143.00, he should not have an arrearage but instead a credit in the amount of \$140.00 (20 x \$7) as of August 31, 2023. Attached to this Motion is aforementioned CSW as Exhibit 1.

SAVINGS ACCOUNT/IRREGULAR INCOME

11. This court made a finding on page 13 that is not supported by the evidence in that it incorrectly identified Father's irregular income when it stated:

“Father has already earned an \$115,309.00 in irregular income in 2023... “

12. Father's paystub shows that his gross amount of income is \$115,309, which takes into account his overtime pay *and* his regular time pay. Father's irregular income is his overtime pay which is stated on his paystub to be in the amount of \$68,749.00.
13. Therefore, Father should only be required to deposit a total of \$10,312.00 (.15 x \$68,749.00).

MARITAL RESIDENCE

14. This Court's finding that on the top of page 3 that “the Court sees no evidence that Father

ever requested that the house be placed for sale so he does not yet have an option for first right of refusal at the fair market value” is not supported by the evidence.

15. This court recognizes, on page 2 of the Order, that on July 31, 2023, at 8:48 a.m. Father’s Counsel inquired about the marital residence by stating Father “would like to purchase the marital residence for the appraisal amount.” This court erred by failing to interpret Father’s inquiry as his request to sale the property because stating that he wants to purchase it is the same as requesting it be sold, but to him.
16. Therefore, Father request that the marital residence be sold and that it be sold to Father on his option to purchase at fair market value.

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DocuSigned by:

/s/ Seth A. Lilly

Seth A. Lilly, Respondent/Father

Respectfully submitted,

/s/ John N. Claussen

John N. Claussen (#26794-84)

Attorney for Respondent

REQUESTS FOR RELIEF

Father requests that the errors described above be corrected pursuant to Indiana Trial Rule 59. In the alternative, Father requests that her requests be reconsidered, and for all other appropriate relief.

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing have been e-filed and served upon the following parties, and via United States Postal Service, Postage Prepaid those parties not capable of e-serving, this 11th day of October, 2023:

Caitlin M. Miller

/s/ John N. Claussen

John N. Claussen (#26794-84)

Attorney for Petitioner

Claussen Law Office

P.O. Box 2239

Terre Haute, IN 47802

812-299-1900

App-178

Appendix K

**STATE OF INDIANA
VIGO SUPERIOR COURT
DIVISION TWO
TERM 2023**

IN RE: THE MARRIAGE OF	CAUSE NO.
MELISSA ANN LILLY and	84D02 2206
SETH ADAM LILLY	DC 3750

ORDER ON MOTION TO CLARIFY

Court receives Father's Motion to Clarify September 8, 2023, Order. The Court having reviewed the Motion and taken the matter under advisement, finds as follows.

Father's Motion to Clarify is hereby GRANTED. Father refers to page 4 of the Order which references the GAL recommendations. The Court did not adopt the GAL Recommendations, however, sees that it did not state where Father's parenting time may take place. On page 9, the Order provides that once Father has submitted a letter from his treating physician, he would proceed to the next phase. The Court has received a letter from Father's treating physician. As such, Father should now be receiving unsupervised parenting time from Saturday to Sunday.

On page 9 and 10, the Order also provides that once Father has completed 16 sessions with Tricia

App-179

May and she submits a report that he has completed 16 sessions, then Father may transition to unsupervised parenting time from Friday at 6:00 p.m. to Sunday at 6:00 p.m. every other weekend. Although Father did not participate in 16 sessions, Tricia May has submitted a Report that he has completed anger management counseling with her and is now participating in individual counseling. Only time will tell how effective counseling is for Father which is a long process. He is required to continue in individual counseling because it is in the best interest of the minor children. He must submit proof every six (6) months that he is continuing in individual counseling.

Father should now be receiving unsupervised parenting time every other weekend from Friday at 6:00 p.m. to Sunday at 6:00 p.m. As the Court still has concerns with Father's ability to comply with Court Orders and engaging in decisions that are an attempt to circumvent the rules set forth, while his parenting can take place outside of Indiana, it must take place within three (3) hours driving distance of Mother's home. The Court believes, or hopes, that this restriction will assist in minimizing disputes and conflict and be in the best interest of the minor children while Father continues to engage in services. The parties may modify this provision by mutual voluntary agreement in writing, otherwise, it will be reconsidered at the hearing on January 6, 2025.

Father also requests clarification regarding deposits into the children's restricted savings accounts. Father has sixty (60) days to deposit money

App-180

into the children's savings account from the date that Mother provides him with details of the account that has been opened. Mother should convey this information in writing through AppClose.

SO ORDERED on October 18, 2023.

VIGO COUNTY INDIANA
SEAL
CIRCUIT & SUPERIOR
COURTS
TL

/s/ LAKSHMI REDDY

LAKSHMI REDDY, JUDGE

Distribution:
All parties of record

App-181

Appendix L

**STATE OF INDIANA
VIGO SUPERIOR COURT
DIVISION TWO
TERM 2023**

IN RE: THE MARRIAGE OF	CAUSE NO.
MELISSA ANN LILLY and	84D02 2206
SETH ADAM LILLY	DC 3750

**ORDER ON FATHER’S MOTION TO CORRECT
ERROR**

Court receives Father’s Amended Motion to Correct Error or in the Alternative, Motion to Reconsider. The Court having reviewed the Motion and taken the matter under advisement, finds a follows.

Father’s Motion to Clarify is hereby GRANTED in part, DENIED in part, and the remainder set for hearing.

Father’s alleges that the Court erred in the September 8, 2023, Order when it referenced the parenting time schedule. Father is correct and the September 8, 2023, Order should have said that “Father’s parenting time since the previous hearing in July has been from 10:00 a.m. on Saturday to 6:00 p.m. on Sunday.” This was an inadvertent error and is hereby corrected and should be considered to now be incorporated into the September 8, 2023, Order.

Father alleges that the Court erred on the issue of irregular income and how much should be deposited in the children's savings account. Father is correct and the September 8, 2023, Order should have shown Father's irregular income to be in the amount of \$68,749.00 and not \$115,309.00. As such, Father is ordered to place \$10,312.00 into the children's savings account. While the Court corrects this error, it recognizes that Mother has filed a Motion to Correct Error disputing that the bonuses should be considered irregular income and rather that such should be deemed gross income. That dispute is being set for hearing so the parties can make further arguments and present any necessary evidence to support their position as to whether the bonuses should be considered regular income.

Father alleges that the Court erred in its decision regarding the marital residence. The Court took a plain meaning interpretation of the Agreement between the parties and the Court's find no basis to seek to interpret Father's intentions and whether such intentions complied with the Agreement. The Agreement provides Father with the first right of refusal at the fair market value and does NOT provide Father with the right to purchase the home for the appraised amount. Father's Motion to Correct Error on this issue is hereby DENIED.

Father has also alleged that the Court erred in calculating child support in failing to consider the day care expenses paid by Father from April 12, 2023, through August 31, 2023. The Court simply cannot

App-183

recall and this issue will be addressed during a hearing. Although, it would seem that the parties and the attorneys are in a better position to know exactly whether Father paid those expenses and if he should be given credit for such payments.

A hearing on Father's Motion to Correct Error is being scheduled and set forth in a separate Order.

SO ORDERED on October 18, 2023.

/s/ LAKSHMI REDDY
LAKSHMI REDDY, JUDGE

Distribution:
All parties of record

VIGO COUNTY INDIANA
SEAL
CIRCUIT & SUPERIOR
COURTS
TL

App-184

Appendix M

**STATE OF INDIANA
VIGO SUPERIOR COURT
DIVISION TWO
TERM 2024**

IN RE: THE MARRIAGE OF	CAUSE NO.
MELISSA ANN LILLY and	84D02 2206
SETH ADAM LILLY	DC 3750

ORDER

Court conducted hearings on Tuesday, January 30, 2024 for Motion for Attorney Fees, and Motion to Correct Errors. Petitioner/Mother, Melissa Ann Lilly appears in person with Counsel, Caitlin Miller. Respondent/Father, Seth Adam Lilly appears in person with Counsel, John Claussen. Witnesses are sworn and evidence is heard.

To simplify the issues, both parties agreed to have the attorneys provide summary arguments of their positions and submit their supportive documentation. Motions to Correct Error filed by both parties are GRANTED to some extent and those corrections are explained below.

Parties agree in open Court for Restraining Order as to Parties filing 2023 State and Federal Tax Returns for exemption and credit purposes until this Court conducts a hearing in this matter. Both parties are advised that they cannot file their 2023 federal

and state taxes and will need to file for an extension until the dispute over exemptions and credits is resolved. These issues will be addressed during the hearing scheduled for May 1, 2024 at 9:00 a.m. allotted one (1) full day so that all pending matters can be addressed. This includes Mother's Motion for Rule to Show Cause, Father's Response which is anticipated, and any other pleadings filed between now and at least 10 days before the May 1st hearing.¹

The pending issues to be resolved on Mother and Father's Motion to Correct Errors is in regards to child support calculations, the arrearage, and access to the bank account in which bonus income is deposited. The Court has done its best to correct and clarify those issues.

1. CHILD SUPPORT CALCULATIONS

In reviewing the arguments by Counsel and the demonstrative documents submitted, it appears that both sides agree that Father's base weekly income should be shown as \$1,488.00/week. The parties disagree on Mother's weekly income, although it is not a huge difference. The Court's recollection is that it calculated income based off the most recent information available. To this extent, the Court leaves Father's base income at \$1488/week

¹ Any pleading filed after April 1, 2024, may or may not be addressed during the May 1st hearing depending on the nature of the pleading and whether the opposing side would have sufficient time to prepare.

and Mother's income at \$949/week. However, the Court corrects its error in the figure used for child care expenses as it appears that should have been \$223.08/week rather than \$200/week. A copy of the child support obligation worksheet is attached hereto and identified as *Exhibit A*. This means that Father's child support should have been ordered to be \$392/week during the time that he had no overnight parenting time.

At some point, Father began having unsupervised parenting time every other weekend. Based upon the Court's previous Order regarding his parenting time schedule, the most overnights that Father can get in a year is 58 overnights. Once Father began receiving every other weekend parenting time, his child support reduced to \$363/week. A copy of the child support obligation worksheet is attached hereto and identified as *Exhibit B*.

2. CHILD SUPPORT ARREARAGE

Father's child support should have been calculated to be \$392/week retroactive to the date that the Petition to Modify Child Support was filed, that being April 12, 2023. The Court calculates this child support amount from April 12, 2023, through January 3, 2024, which is a lapse of 37 weeks. The amount of child support that should have been paid is \$14,504.00. Father paid \$9,378 in child support during this time.

Mother argues that the credit for daycare expenses paid by Father from April 12, 2023, through September 8, 2023, is \$4,461.60 (\$223.08 times 20 weeks). Father argues that he paid \$5,581.00 from April 14, 2023 through September 15, 2023, and requests credit from this amount. An unavoidable problem is that the child support obligation worksheet includes an average of the annual daycare cost because there is a fee difference between the school year versus summer/Christmas holidays. Father is given a credit of \$4,461.60 for the daycare expenses he paid.

To calculate the child support arrearage, the Court takes the \$14,504.00 in child support owed, subtracts the \$4,461.60 in paid daycare expenses and then subtracts the \$9,378 in paid child support which leaves a balance of \$664.40. While the Court could deem this to be an arrearage, the Court finds that the most fair way to account for the difference in proposed daycare expenses is to just determine that there is no child support arrearage as of January 3, 2024.² Essentially, this results in the Court just splitting in half the difference in the discrepancies between the proposed daycare expense credits.

The parties should file a Notice with the Court as to what date Father's child support of \$363/week

² The determination that there is no child support arrearage as of January 3, 2024, is only in regards to the regular child support payments due and is not a finding in regards to the percentage owed from bonus/irregular payments. That determination will be made at the May 1st hearing.

should be retroactive to or this can be addressed during the May1, 2024, hearing.

3. BONUS/IRREGULAR INCOME

The next issue in dispute is how to handle the bonus payments. Both sides agree to have the bonus payments placed into an account and that it be calculated retroactively based upon exactly what Father earns in bonuses. The Court believes it used the correct formula in determining how much of the bonus payments are for the children. Based upon the new corrected child support calculation, during the time that Father had no overnights, his child support was to be \$392/week. The total household income is \$2437.00. Father's child support is approximately 16% of the household income. As such, during the time that Father had no overnights, Father should have contributed 16% of his gross earned bonuses/irregular income. As of the prior date of the hearing, Father had earned \$115,309.00 in bonuses/irregular income which means that at least through that date, he was responsible for depositing into an account for child support the amount of \$18,449.44. The Court is unclear how much more bonuses/irregular income Father earned through December 31, 2023, but that amount would also need to be deposited into a separate account for child support.

From the date that Father began receiving overnight visits every other weekend, his child support was reduced to \$363.00/week. Father's child support is approximately 15% of the household

income. From the date that his child support is modified to \$363/week, Father should contribute 15% of his bonuses/irregular income into a bank account for child support. The parties would be aware of when this date began and should reach an agreement or it will be addressed during the May 1st hearing.

The Court's previous Order had instructed that the income earned from bonuses/irregular income be placed into an account for the benefit of the children when they turn 18. Father is agreeable to this. Mother argues that this arrangement deprives the children of this money now and is contrary to the purpose of child support. The Court thought that was a practical approach to minimize conflict, but upon further consideration, it is not the application of the law.

The Indiana Child Support Guidelines "are based on the Income Shares Model" and this "model is predicated on the concept that the child should receive the same proportion of parental income that he or she would have received if the family had remained intact." *Marmaduke v. Marmaduke*, 640 N.E.2d 441, 443 (Ind. Ct. App. 1994) (citing Child Support G. 1). The trial court is required to consider the standard of living that the child would have enjoyed had the family stayed together. *Id.* See also *Fields v. Fields*, 749 N.E.2d 100, 104 (Ind. Ct. App. 2001)

"Child support awards under the Guidelines are designed to provide the children as closely as

possible with the same standard of living they would have enjoyed had the marriage not been dissolved.” *Hamiter v. Torrence*, 717 N.E.2d 1249, 1253 (Ind. Ct. App. 1999) (citing *Bussert v. Bussert*, 677 N.E.2d 68, 70 (Ind. Ct. App. 1997)). “The income shares model adopted by the Indiana Child Support Guidelines reflects this principle.” *Id.* (citing Commentary to Child Supp. G. 1).” The income shares model set forth in the Guidelines apportions the costs of children between the parents in proportion to each parent’s weekly available income.” *Id.* (citing *Jendreas v. Jendreas*, 664 N.E.2d 367, 372 (Ind. Ct. App. 1996)). “[T]he standard is not whether a parent can support a child on a certain amount of support. Instead, the trial court apportions support between the parents on the premise that a child should receive the same portion of parental income after a dissolution that they would have received if the family had remained intact.” *Rolley v. Rolley*, 13 N.E.3d 521, 532 (Ind. Ct. App. 2014).

Any argument by Father that permitting Mother to have access to this money to support the children would result in a windfall is not supported by the law. The Indiana Court of Appeals has stated that when the Guidelines attempt to provide children with the same portion of parental income after a dissolution that they would have enjoyed if the family remained intact; and because the “right to support lies exclusively with the child and a parent merely holds child support payments in trust for the benefit of the child”, then “ordering child support in an amount determined through proper application of

the Guidelines cannot constitute a windfall to the child or to a parent.” *Hamiter*, 717 N.E.2d at 1253.

While Father may believe the child support amount is unjust to him, the Court does not believe the amounts being ordered are unjust to Jayce and Hayes as it permits his sons to enjoy the lifestyle they would have enjoyed had the marriage remained intact.

The law requires that “trial courts to consider, among other things, ‘the standard of living the child would have enjoyed had the marriage not dissolved or had the separation not been ordered’ in fashioning (or modifying) a child support order”. *Johnson v. Johnson*, 999 N.E.2d 56, 60 (Ind. 2013). With that in mind, the Court corrects its error and determines that percentage of Father’s bonus/irregular payments should be placed into a bank account in Mother’s name along with payable on death to Jayce and Hayes. Mother shall have unrestricted access to those funds so long as they are used for the sole benefit of Jayce and Hayes.

4. ATTORNEYS FEES

Mother filed a Verified Petition for Attorney Fees on or about April 11, 2023. She is requesting attorney fees for post-dissolution matters arguing that Mother has spent a substantial amount on attorney fees by having the Court intervene “in Father’s relentless harassment and harmful behavior and defending herself against Father’s frivolous claims in his several motions and/or

responses.” Mother filed another Verified Petition for Rule to Show Cause and Petition for Attorney Fees on or about August 28, 2023. This Petition related to Father’s non-compliance with the Mediated Settlement Agreement regarding the marital home and Father’s refusal to execute necessary documents. In interpreting the Mediated Settlement Agreement, the Court found in favor of Mother. At the time of the hearing in September, Mother’s Counsel submitted an Affidavit of Attorney Fees which was through the current date for a total amount of \$23,053.23 which included a billing reduction of \$10,000.00.

The Court Order dated September 8, 2023, sets forth the law in awarding attorney fees and it will not be restated again herein. The Order also stated that a hearing on attorney fees was scheduled for December 6, 2023, which was for the sole purpose of allowing Father to question Mother’s Counsel on the reasonableness of her attorney fees and the hourly rate. The December 6th hearing had to be rescheduled and during this hearing on January 30, 2024, Father was given the opportunity to question Mother’s Counsel. The Court finds that Mother’s hourly rate of \$275/hour to be reasonable and within community standards. Mother’s request for attorney fees are all post-dissolution and the Court finds that a large majority of the fees incurred were due to disputes over Father’s behavior, engaging Father in services and ensuring his compliance, and the requirement to restrict his parenting time. Father raised the point that any fees related to retirement benefits and child support should not be included in Mother’s attorney fees request.

The Court has now reviewed the Updated Affidavit for Attorney Fees and attached billing ledger. The Court finds that the attorney fee request of \$23,053.23 which was for post-dissolution services through the September hearings to be reasonable and were incurred due to Father's behavior and actions/inactions. If not for the repeated hearings to address Father's behavior, it is unlikely that Mother would have incurred these fees. In addition, there is a large discrepancy in incomes and Father is in a position to afford these fees and is in a position to continue to earn additional income. Mother is awarded those attorney fees. In reviewing the ledger for services rendered after the September hearing, those fees are more related to Motions to Correct Error which was based upon child support. Those attorney fees incurred are not awarded to Mother.

Accordingly, Mother is awarded fees in the amount of \$23,053.23. To minimize further communication between the parties, the attorney fees should be paid directly to Hasler Kondras & Miller. Father should make payments of \$1000.00/month on the 1st of every month beginning on March 1, 2024 until paid in full. If he fails to make timely payments and Mother's Counsel files a Rule to Show Cause, this may be reduced to a judgment and begin accruing interest at the statutory rate of Eight Percent (8.0%).

5. COMMUNICATIONS

In calculating child support and reviewing the party's exhibits, the court reviewed the daycare receipts submitted by Father. Those transactions contain a lot of communication from Father to Mother. The Court's last Order was clear that the Court's goal was to keep the parties communication to a bare minimum and only that which is absolutely essential. With day care expenses now included in child support, there should be no reason for any of these types of discussions. While the Court may have entered a subsequent Order encouraging the parties to be flexible and work together regarding parenting time, the Court's impression during this hearing is that the parties are not capable of doing so in a cooperative and amicable manner.

The parties are advised that they cannot change or modify any of the terms of the Court's Order and/or the parenting time or have discussions regarding such between each other. The parties need to simply follow the exact terms of the Court's Order. If changes need to be made for significant and justifiable reasons, then the parties need to contact their attorney and work through their attorney. This mandate will remain in effect until the next review hearing in 2025. That being said, if the Court finds that Father is repeatedly contacting his attorney to make changes for insignificant and/or no reasonable reason for the purpose of requiring Mother to incur attorney fees, the Court will consider awarding her attorney fees incurred. Both parties have already incurred significant costs in attorney fees and they should keep this in mind.

App-195

A hearing to address whether child support is current, child care credit, tax exemptions and any other issues that arise will be addressed during a full day hearing on May 1, 2023, commencing at 9:00 a.m.

SO ORDERED ON this 2nd day of February, 2024.

VIGO COUNTY INDIANA
SEAL
CIRCUIT & SUPERIOR
COURTS
TL

/s/ LAKSHMI REDDY
LAKSHMI REDDY, JUDGE

Distribution:
All parties of record
Child Support

Child Support Obligation Worksheet (csow)

Each party shall complete that portion of the worksheet that applies to him or her, sign the form and file it with the court. This worksheet is required in all proceedings establishing or modifying child support.

IN RE: In re The **CASE NO:** 84D02-2206-
Marriage of Melissa DC-3750
Lilly and Seth Lilly **FATHER:** Seth Lilly
 MOTHER: Melissa Lily

Children	DOB	Children	DOB
Jayce	04/29/2017		
Hayes	02/27/2020		
		Father	Mother
1. WEEKLY GROSS INCOME		\$1,488.00	\$949.00
A. Subsequent Child Multiplier Credit (.065 .097 .122 .137 .146 .155 .164 .173)		\$0.00	\$0.00
B. Child Support (Court Order for Prior Born)		\$0.00	\$0.00
C. Child Support (Legal Duty for Prior Born)		\$0.00	\$0.00
D. Maintenance Paid		0.00	0.00

App-197

E. WEEKLY ADJUSTED INCOME (WAI) Line 1 minus 1A, 1B, 1C, and 1D	\$1,488.00	\$949.00	
2. PERCENTAGE SHARE OF TOTAL WAI	61.06%	38.94%	
3. COMBINED WEEKLY ADJUSTED INCOME (Line 1E)			\$2,437.00
4. BASIC CHILD SUPPORT OBLIGATION Apply CWAI to Guideline Schedules	\$283.92	\$181.08	\$465.00
A. Weekly Work- Related Child Care Expense of each parent	\$0.00	\$223.08	\$223.08
B. Weekly Health Insurance Premium - (Children's portion)			\$71.00
5. TOTAL CHILD SUPPORT OBLIGATION (Line 4 plus 4A and 4B)			\$759.08
6. PARENT'S	\$463.48	\$295.60	

App-198

CHILD SUPPORT OBLIGATION (Line 2 times Line 5)			
7. ADJUSTMENTS			
A. () Obligation from Post-Secondary Education Worksheet Line J	<u>+\$0.00</u>	<u>+\$0.00</u>	
B. (X) Payment of work-related child care by each parent (Same amount as Line 4A)	<u>-\$0.00</u>	<u>-\$223.08</u>	
C. (X) Weekly Health Insurance Premium (Children's portion)	<u>-\$71.00</u>	<u>-\$0.00</u>	
D. (X) Parenting Time Credit from Parenting Time Credit Worksheet(s) (\$0, \$0)/2	<u>-\$0.00</u>	<u>-\$0.00</u>	
8. RECOMMENDED CHILD SUPPORT OBLIGATION	\$392.00		

App-199

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I affirm under penalties for perjury that the foregoing representations are true.

Father: _____

Dated: _____ Mother: _____

Uninsured Health Care Expense to be paid: 61.06%
by Father; 38.94% by Mother.

Child Support Obligation Worksheet (csow)

Each party shall complete that portion of the worksheet that applies to him or her, sign the form and file it with the court. This worksheet is required in all proceedings establishing or modifying child support.

IN RE: In re The Marriage of Melissa Lilly and Seth Lilly	CASE NO: 84D02-2206-DC-3750
	FATHER: Seth Lilly
	MOTHER: Melissa Lily

Children	DOB	Children	DOB
Jayce	04/29/2017		
Hayes	02/27/2020		
		Father	Mother
1. WEEKLY GROSS INCOME		\$1,488.00	\$949.00
A. Subsequent Child Multiplier Credit (.065 .097 .122 .137 .146 .155 .164 .173)		\$0.00	\$0.00
B. Child Support (Court Order for Prior Born)		\$0.00	\$0.00
C. Child Support (Legal Duty for Prior Born)		\$0.00	\$0.00
D. Maintenance Paid		0.00	0.00

App-201

E. WEEKLY ADJUSTED INCOME (WAI) Line 1 minus 1A, 1B, 1C, and 1D	\$1,488.00	\$949.00	
2. PERCENTAGE SHARE OF TOTAL WAI	61.06%	38.94%	
3. COMBINED WEEKLY ADJUSTED INCOME (Line 1E)			\$2,437.00
4. BASIC CHILD SUPPORT OBLIGATION Apply CWAI to Guideline Schedules	\$283.92	\$181.08	\$465.00
A. Weekly Work- Related Child Care Expense of each parent	\$0.00	\$223.08	\$223.08
B. Weekly Health Insurance Premium - (Children's portion)			\$71.00
5. TOTAL CHILD SUPPORT OBLIGATION (Line 4 plus 4A and 4B)			\$759.08
6. PARENT'S	\$463.48	\$295.60	

App-202

CHILD SUPPORT OBLIGATION (Line 2 times Line 5)			
7. ADJUSTMENTS			
A. () Obligation from Post-Secondary Education Worksheet Line J	<u>+\$0.00</u>	<u>+\$0.00</u>	
B. (X) Payment of work-related child care by each parent (Same amount as Line 4A)	<u>-\$0.00</u>	<u>-\$223.08</u>	
C. (X) Weekly Health Insurance Premium (Children's portion)	<u>-\$71.00</u>	<u>-\$0.00</u>	
D. (X) Parenting Time Credit from Parenting Time Credit Worksheet(s) (\$29.04, \$29.04)/2	<u>-\$29.04</u>	<u>-\$0.00</u>	
8. RECOMMENDED CHILD SUPPORT OBLIGATION	\$363.00		

App-203

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I affirm under penalties for perjury that the foregoing representations are true.

Father: _____

Dated: _____ Mother: _____

Uninsured Health Care Expense to be paid: 61.06%
by Father; 38.94% by Mother.

App-204

VERIFICATION

I verify under penalties of perjury that the documents in this Appendix are accurate copies of parts of the Record on Appeal.

Respectfully submitted,

/s/ Andrea L. Ciobanu

Andrea L. Ciobanu, #28942-49

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Attorney for Appellant Seth Adam
Lilly

App-205

CERTIFICATE OF SERVICE

I hereby further certify that on this 26th day of June 2024, a copy of the foregoing was served by IEFS upon Appellee's trial counsel of record:

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App-206

Appendix N

[Filed: Jan. 10, 2025]

IN THE INDIANA COURT OF APPEALS
CAUSE NO. 24A-DC-00510

SETH ADAM LILLY,	) Appeal from the
	) Vigo Superior
Appellant/Respondent	) Court 2
Below,)
	) Trial Court Cause
and	) No. 84D02-2206-
	) DC-003750
MELISSA ANN LILLY,)
) The Honorable
Appellee/Petitioner) Lakshmi Reddy
Below,)

PETITION TO TRANSFER

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Attorney for Appellant Seth Adam Lilly

QUESTIONS PRESENTED ON TRANSFER

- I. Whether the Court of Appeals has sanctioned a significant departure from accepted law in its interpretation of the parties' settlement agreement.
- II. Whether the Court of Appeals has sanctioned a significant departure from accepted law in its award of attorney's fees to Appellee.

TABLE OF CONTENTS

QUESTIONS PRESENTED ON TRANSFER	[App-207]
TABLE OF AUTHORITIES	[App-209]
BACKGROUND AND PRIOR TREATMENT OF ISSUES ON TRANSFER	[App-210]
ARGUMENT.....	[App-213]
I. The Court of Appeals has sanctioned a significant departure from accepted law by improperly adding terms to the Settlement Agreement	[App-213]
III Because the Court of Appeals found that Wife had not refinanced, she cannot be awarded fees in connection with her Petition for Rule to Show Cause regarding the Marital Resident	[App-220]
CONCLUSION	[App-222]
WORD COUNT CERTIFICATE	[App-223]
CERTIFICATE OF SERVICE	[App-224]

TABLE OF AUTHORITIES

Cases

Conwell v. Gray Loon Outdoor Mktg. Grp., Inc., 906
N.E.2d 805, 813 (Ind. 2009) [App-214]

Four Seasons Mfg., Inc. v. 1001 Coliseum, LLC, 870
N.E.2d 494, 501 (Ind. Ct. App. 2007) [App-214]

McLinden v. Coco, 765 N.E.2d 606, 613 (Ind. Ct. App.
2002) [App-214]

Mead Johnson & Co. v. Oppenheimer, 458 N.E.2d
668, 670 (Ind. Ct. App. 1984) [App-214, App-218]

Stanke v. Swickard, 43 N.E.3d 245, 250 (Ind. Ct. App.
2015) [App-221]

Wenning v. Calhoun, 827 N.E.2d 627, 629 (Ind. Ct.
App. 2005) [App-214]

Rules

Ind. Appellate Rule 57(H)(6) [App-220, App-222]

BACKGROUND AND PRIOR TREATMENT OF
ISSUES ON TRANSFER

The parties' marriage was dissolved on January 24, 2023. *Appellant's App. Vol. 2, p. 8*. The parties' rights to marital property were resolved by their Mediated Settlement Agreement (hereinafter the parties' "Settlement Agreement"). *Appellant's App. Vol. 2, pp. 24-35*. The parties entered their Settlement Agreement on January 23, 2023. *Id.*

The parties owned real property located at 239 N. Crews Place, West Terre Haute, IN 47885 (hereinafter the "Marital Residence"), which consisted of a house and other improvements on four (4) parcels of land. *Appellant's App. Vol. 2, p. 25*. Under the Settlement Agreement, Appellee Melissa Ann Lilly (hereinafter "Wife") was awarded the Marital Residence. *Id.* Wife was obligated to assume the mortgage loan for the Marital Residence or obtain refinancing to remove Appellant Seth Adam Lilly (hereinafter "Husband") from the mortgage loan within six (6) months. *Id.* In the event Wife was unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of the agreement, then upon Husband's request, the Marital Residence would immediately be placed for sale and sold in order to remove Husband from the mortgage and note obligations. *Id.* If the Marital Residence was to be sold, Husband shall have the right of first refusal to purchase the Marital Residence at fair market value. If Husband were then to not purchase the Marital Residence, he was to execute a Quit Claim Deed relinquishing all interest that he may have in

conjunction with the refinancing or loan assumption or sale. *Id.* The Quit Claim Deed was to be prepared by Wife's attorney. *Id.* Husband was to cooperate with any attempts to refinance, assume, or sell the Marital Residence. *Id.*

Under the terms of the Settlement Agreement, the deadline for Wife to assume the mortgage loan for the Marital Residence or obtain refinancing was July 24, 2023. Wife did not submit her application for refinancing until Friday, July 21, 2023. *Ex. Vol. 1, p. 229.* Wife did not assume the mortgage loan or obtain refinancing within six (6) months of the Settlement Agreement. On July 31, 2023, Husband's counsel emailed Wife's counsel, stating the Husband "would like to purchase the Marital Residence for the appraisal amount." *Ex. Vol. 1, p. 65.*

On August 28, 2023, Wife filed her Petition for Rule to Show Cause stating that she had obtained the necessary financing within six (6) months of the Settlement Agreement, but that Husband refused to execute the documents required to remove himself from the mortgage. *Appellant's App. Vol. 2, p. 36.* Two days later, Husband responded to Wife's Petition for Rule to Show Cause and filed his own Petition for Rule to Show Cause stating that Wife had failed to either assume the mortgage loan or obtain refinancing within six (6) months of the Settlement Agreement and requested that the trial court enforce the agreement that the Marital Residence be sold with Husband having the right of first refusal. *Appellant's App. Vol. 2, p. 38-41.*

On September 1, 2023, the trial court issued its Order Appointing Commissioner. *Appellant's App. Vol. 2, p. 42.* The trial court appointed attorney Jon

Spurr (hereinafter “Mr. Spurr”) to serve as a commissioner for purposes of signing any documents on behalf of Husband “for the sole purpose of allowing [Wife] to refinance the marital residence[.]” *Appellant’s App. Vol. 2, p. 42*. As noted therein, the closing was to take place on October 1, 2023. *Id.* Husband was ordered to pay any fees charged by Mr. Spurr. *Id.*

On September 8, 2023, the trial court issued its Order from the August 28th and 31st, 2023 hearings. *Appellant’s App. Vol. 2, pp. 43-60*. In relevant part, the trial court granted Wife’s Petition for Rule to Show Cause and ordered that she proceed with the refinancing of the Marital Property. *Appellant’s App. Vol. 2, p. 45*.

In his Motion to Correct Error, Husband requested, in relevant part, that the trial court correct its error regarding the Marital Residence and order that the Marital Residence be sold to Husband on his option to purchase it at fair market value. *Appellant’s App. Vol. 2, pp. 63, 68*.

The trial court denied Husband’s Motion to Correct Error. *Appellant’s App. Vol. 2, p. 73*. The trial court further ordered that Husband pay attorney fees in the amount of \$23,053.23, some of which was awarded in connection with the parties’ respective petitions for rule to show cause. *Appellant’s App. Vol. 2, p. 78*.

On March 1, 2024, Husband filed his Notice of Appeal. Husband appealed the trial court’s order on the enforcement of the Settlement Agreement regarding the sale of the Marital Residence and the award of attorney’s fees to Wife.

On July 31, 2024, the trial court issued an order following a hearing held on July 24, 2024. *Appellant's Sup. App. Vol. 2, pp. 2-6*. In that order, the trial court ordered that Husband pay an additional \$1,500 towards Wife's trial attorney fees and \$10,000 towards Wife's appellate attorney fees. *Appellant's App. Sup. Vol. 2, pp. 3, 5*. In total, the trial court has ordered that Husband pay \$34,553.23 in Wife's attorney fees.

On November 26, 2024, the Court of Appeals issued its Memorandum Decision which affirmed the trial court's order. The Court of Appeals found that Wife had not fulfilled her obligations to refinance the Marital Residence by the deadline, but found that Husband had not requested that the Marital Residence be sold and that Husband's ability to purchase the Marital Residence was limited to exercising his right of refusal to purchase it at fair market value.

Husband now timely files his Petition to Transfer.

ARGUMENT

I. The Court of Appeals has sanctioned a significant departure from accepted law by improperly adding terms to the Settlement Agreement.

The present dispute arose from the interpretation of the Settlement Agreement regarding the parties' respective rights to the Marital Residence. Here, the language regarding the parties' rights to the Marital Property is

unambiguous. The law on the interpretation of unambiguous language of a contract is well established. Such language is conclusive and binding on the parties and the court, and the parties' intent is determined from the four corners of the documents. *Four Seasons Mfg., Inc. v. 1001 Coliseum, LLC*, 870 N.E.2d 494, 501 (Ind. Ct. App. 2007). A court cannot make a contract for the parties, nor is a court at liberty to revise a contract, or supply omitted terms while professing to construe it. *Mead Johnson & Co. v. Oppenheimer*, 458 N.E.2d 668, 670 (Ind. Ct. App. 1984). All that is required to render a contract enforceable is reasonable certainty in the terms and conditions of the promises made, including by whom and to whom; absolute certainty in all terms is not required. *Conwell v. Gray Loon Outdoor Mktg. Grp., Inc.*, 906 N.E.2d 805, 813 (Ind. 2009). Only essential terms need be included to render a contract enforceable. *Id.* A "contract must 'provide a basis for determining the existence of a breach and for giving an appropriate remedy.'" *Wenning v. Calhoun*, 827 N.E.2d 627, 629 (Ind. Ct. App. 2005) (citing *McLinden v. Coco*, 765 N.E.2d 606, 613 (Ind. Ct. App. 2002)).

Here, in relevant part, the Settlement Agreement states:

The parties are joint owners of the [Marital Residence]. Wife shall be awarded said real property and shall be solely responsible for, pay and keep current, any and all indebtedness thereon, holding Husband harmless therefrom. Wife

App-215

shall assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within six (6) months. In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband's request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value. If Husband does not purchase the property, then he shall execute a Quit Claim Deed relinquishing all interest that he may have in conjunction with the refinancing or loan assumption or sale. Quit Claim Deed to be prepared by Wife's attorney. Husband shall cooperate with any attempts to refinance, assume or sell the marital residence.

Appellant's App. Vol. 2, p. 25.

As Husband argued, the language regarding Wife's requirements for refinancing the Marital Property is unambiguous. Wife's possession of the Marital Residence was contingent upon her

assuming the mortgage loan or obtaining refinancing to remove Husband from the mortgage loan by July 24, 2023. In plain terms, the Settlement Agreement required Wife to “obtain refinancing” not obtain mere “approval to refinance the mortgage loan” by this deadline. The Court of Appeals agreed with this plain interpretation of the Settlement Agreement, holding that Wife had failed to satisfy her obligations.

Although the Court of Appeals correctly interpreted Wife’s obligation, and correctly held that she failed to fulfill her obligations, the same cannot be said for its interpretation of Husband’s obligations. In relevant part, the Court of Appeals held as follows:

Our review of the record reveals that upon learning that Wife had not timely obtained refinancing, Husband did not request that the marital residence be immediately placed for sale. Rather, his counsel simply sent Wife’s counsel an email expressing Husband’s interest in purchase the marital residence for the appraised value. Husband’s expression of interest was not a request that the marital residence be immediately placed for sale, and the Settlement Agreement used the term fair market value and not appraised value. Further, even if Husband had requested that the marital residence be immediately placed for sale, pursuant to the plain language of the Settlement

App-217

Agreement, Husband had only the right of first refusal to purchase the property. As a result, the trial court did not abuse its discretion in interpreting the Settlement Agreement.

Mem. at p. 17.

This misreading of the Settlement Agreement revolves around the language for Husband's right of first refusal, which the trial court and the Court of Appeals both utilized to improperly add terms to the Settlement Agreement. In short, the Settlement Agreement does not restrict Husband's ability to purchase the Marital Residence only through exercising a right of first refusal after a third-party offer is made. The Settlement Agreement reads, in relevant part:

In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband's request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value.

Appellant's App. Vol. 2, p. 25. The plain reading is that the Marital Residence was to be sold *and* Husband had a right of first refusal at fair market value. None of this language precluded Husband from purchasing the Marital Residence outright without first having to wait for a third party offer and then exercise his right of first refusal to purchase at fair market value. The operative language here is simply that the Marital Residence was to be placed immediately for sale and sold and *if* a third party made an offer while it was on the market, then Husband would have the right of first refusal to purchase it at fair market value. The trial court and Court of Appeals' interpretation of the Settlement Agreement improperly added terms that Husband could only purchase the Marital Residence through exercising his right of first refusal and that he could only purchase it at fair market value. *Mead Johnson & Co.*, 458 N.E.2d at 670 (A court cannot make a contract for the parties, nor is a court at liberty to revise a contract, or supply omitted terms while professing to construe it.)

The record shows that Husband unambiguously expressed his wish to purchase the Marital Residence. On July 31, 2023, Husband's counsel emailed Wife's counsel, stating that, "[Husband] would like to purchase the marital residence for the appraisal amount." *Ex. Vol. 1, p. 65.* By that time, as the Court of Appeals agreed, Wife had failed to fulfill her obligations, thus activating Husband's right request that the Marital Residence be sold. The crux of Husband's obligation at that point was simply to request that the Marital Property be placed for sale. Husband's request to

“purchase” the Marital Residence clearly expressed his request that the property be placed for sale, since he would by only be able to purchase it, either outright or after exercising his right of first refusal, if it was first placed for sale. Put differently, Husband’s request to purchase the Marital Property without the property consequently being immediately placed for sale would lead to an absurd result.

The trial court and Court of Appeals miss the mark on Husband’s actual obligations by focusing on his right of first refusal and his ability to then purchase the property at its fair market value. Husband’s obligations towards exercising his right of first refusal would only be activated if or when a third-party offer was made after the property had been placed for sale. If there was a dispute between whether Husband needed to offer to purchase the Marital Residence at the appraised or fair market value, this would only be relevant *after* the property had already been placed for sale. Until that time, Husband’s only obligation was to communicate his intent to Wife to have the Marital Residence sold, which he clearly did. In short, whether Husband asked to purchase the Marital Residence at its appraised or fair market value was irrelevant at this stage of the proceedings.

Therefore, Husband fulfilled his obligations for the sale of the Marital Residence according to the Settlement Agreement. Consequently, Wife was obligated to immediately place the Marital Residence for sale.

By interpreting Husband’s counsel’s message as insufficient and limiting Husband ability to

purchase the Marital Residence through the exercise of his right of first refusal, the Court of Appeals sanctioned a significant departure from accepted law by adding terms to the unambiguous language of the Settlement Agreement. Therefore, the Supreme Court should accept transfer pursuant to Ind. Appellate Rule 57(H)(6) and remand with instructions to order the sale of the Marital Residence with Husband having the right of first refusal to purchase the Marital Residence or otherwise purchase the Marital Residence outright.

III. Because the Court of Appeals found that Wife had not refinanced, she cannot be awarded fees in connection with her Petition for Rule to Show Cause regarding the Marital Resident.

The trial court granted Wife's Petition for Rule to Show Cause and ordered that Husband pay attorney fees in a total amount of \$23,053.23. *Appellant's App. Vol. 2, p. 78*. The trial court does not delineate what amount of these fees was awarded in connection with the parties' competing Petitions for Rule to Show Cause but specifies that the attorney's fees Mother incurred after the September Hearing¹ are not included. *Id.* Regardless, the trial court awarded Wife attorney fees, at least in part, in connection with the issues related to the Marital Residence. *Id.*

¹ There was no hearing in September 2023. Husband is unsure whether the trial court is instead referring to the August hearings or the Order dated September 8, 2023.

The trial court never explicitly found Husband in contempt; however, the trial court ruled in Wife's favor regarding the Marital Residence, finding that Husband was non-compliant with the Settlement Agreement on this issue. *Appellant's App. Vol. 2, p. 78*. To the extent that the trial court based a portion of the attorney fees award on Husband being noncompliant or in contempt, any portion of said award must be vacated since, as argued above, Wife failed to fulfill her obligations for the sale of the Marital Residence and Husband fully complied. The Court of Appeals agreed that Wife failed to refinance the Marital Residence before the close of the six-month deadline. Therefore, even if the Court of Appeals did not agree that Husband fulfilled his obligations for exercising his rights to the property, it is clear that Husband could not have violated the Settlement Agreement as alleged by Wife in her Petition for Rule to Show Cause. To the contrary, Wife violated the clear and unambiguous terms of the Settlement Agreement when she refused to place the Marital Residence for sale despite knowing that she had not obtained refinancing for the Marital Property before the deadline and that Husband had requested to purchase the property. Therefore, Husband's acts regarding the Marital Residence cannot serve as a basis for an award of attorney's fees to Wife.

As such, the order on attorney fees is unreasonable. By affirming the trial court's award of attorney fees, the Court of Appeals has sanctioned a significant departure from accepted law. See *Stanke v. Swickard*, 43 N.E.3d 245, 250 (Ind. Ct. App. 2015) ("As we reverse the trial court's findings of contempt

against Stanke, we remand to the trial court with instructions to make a determination of appropriate attorney fees without considering any finding of contempt.”) Because the trial court committed reversible error when granting Wife’s Petition for Rule to Show Cause and denying Husband’s Petition for Rule to Show Cause regarding the Marital Residence, the trial court’s order awarding attorney’s fees to Wife must also be reversed as it relates to the Marital Residence. Therefore, any award of attorney’s fees to Wife must be determined (1) without considering any finding that Husband was non-compliant with the Settlement Agreement regarding the Marital Residence and (2) with consideration of the attorney’s fees Husband incurred in connection with his own Petition for Rule to Show Cause.

Therefore, the Supreme Court should accept transfer pursuant to App. R. 57(H)(6) and remand with instructions to reduce the award of attorney fees to Wife.

CONCLUSION

For the reasons herein stated, Husband respectfully requests the Court grant this Petition to Transfer and reverse and remand to the trial court with instructions to deny Wife’s Petition for Rule to Show Cause, grant Husband’s Petition for Rule to Show Cause, order that the Marital Residence be placed immediately for sale with Husband having the right of first refusal to purchase the Marital Residence or otherwise purchase the Marital

App-223

Residence outright, and recalculate any award of attorney's fees accordingly.

Respectfully submitted,

/s/ Andrea L. Ciobanu

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WORD COUNT CERTIFICATE

I hereby certify that this brief contains no more than 4,200 words in compliance with Indiana Appellate Rule 44.

/s/ Andrea L. Ciobanu

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App-224

CERTIFICATE OF SERVICE

I hereby further certify that on this January 10, 2025, a copy of the foregoing was served by IEFS upon the following:

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App-225

Appendix O

Caitlin Miller

From: John Claussen, Attorney
<John@Claussenlawoffice.com>
Sent: Monday, July 31, 2023 8:48 AM
To: Caitlin Miller
Cc: June
Subject: Re; Lilly
Attachments: Loan Payoff.pdf; Lilly, Melissa -
Stlmt Agrmt 012.pdf; 293 Crews
Appraisal.pdf

Caitlin,

Has Melissa been unable to obtain financing? Seth would like to purchase the marital residence for the appraisal amount. Let me know.

John H. N. Claussen
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.....
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App-226

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No. 25-38

In the Supreme Court of the United States

SETH ADAM LILLY,
Petitioner,

v.

MELISSA ANN LILLY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE INDIANA COURT OF APPEALS

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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Attorneys for Respondent

Twenty-sixth day of September, MMXXV

QUESTIONS PRESENTED

1. Whether a state court's routine interpretation of the terms of a private divorce settlement agreement creates a substantial federal question under the Due Process Clause or the Contract Clause?

2. Whether a state appellate court's application of a state-law standard of review presents a federal question for this Court's review, especially where the petitioner expressly and repeatedly urged the state court to apply the very standard he now claims was constitutional error?

TABLE OF CONTENTS

Questions Presented	i
Table of Authorities.....	vii
Introduction.....	1
Statement of the Case	2
Reasons for Denying the Petition	6
I. The Petition Should Be Denied Because Husband Failed to Preserve His Federal Claims in State Court.....	6
II. The Petition Sould Be Denied because It Involves a Routine State-Law Contract Dispute that Raises No Substantial Federal Question	7
III. The Indiana Courts' Application of a State- Law Standard of Review, Which Petitioner Himself Advanced, Presents No Federal Question For This Court	11
Conclusion	15
Appendix	
Appendix A	
Brief of Appellant, Indiana Court of Appeals, <i>Seth Adam Lilly v. Melissa Ann Lilly</i> ,	

No. 24a-Dc-00510 (Jun. 26, 2024) App-1

Appendix B

Certified Docket Sheet, Vigo County
Superior Court 2, *In re the Marriage of
Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Mar. 5, 2024) App-30

Appendix C

Mediated Settlement Agreement, Vigo
Superior Court, *In re the Marriage of
Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Jan. 23, 2023) App-86

Appendix D

[Melissa Lilly's] Verified Petition for Rule
to Show Cause and Petition for Attorney
Fees, Vigo County Superior Court, *In re
the Marriage of Melissa Ann Lilly and
Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Aug. 28, 2023) App-110

Appendix E

[Seth Lilly's] Verified Petition for Rule to
Show Cause and To Enforce Previous
Order and Petition for Attorney Fees,
Vigo County Superior Court, *In re: the*

<i>Marriage of Melissa Ann Lilly and Seth Adam Lilly,</i> No. 84D02-2206-DC-003750 (Aug. 30, 2023)	App-113
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Appendix F

[Seth Lilly's] Response to [Melissa Lilly's] Verified Petition for Rule to Show Cause and Petition for Attorney Fees, Vigo County Superior Court, <i>In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly,</i> No. 84D02-2206-DC-003750 (Aug. 30, 2023)	App-117
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Appendix G

Order Appointing Commissioner, Vigo County Superior Court, <i>In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly,</i> No. 84D02-2206-DC-003750 (Sep. 1, 2023)	App-120
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Appendix H

Order, Vigo County Superior Court, <i>In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly,</i> No. 84D02-2206-DC-003750 (Sep. 8, 2023)	App-122
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Appendix I

Motion to Correct Error or, In the
Alternative, Motion to Reconsider, Vigo
County Superior Court, *In re the
Marriage of Melissa Ann Lilly and Seth
Adam Lilly*,
No. 84D02-2206-DC-003750
(Oct. 8, 2023) App-162

Appendix J

Amended Motion to Correct Error
Pursuant to Trial Rule 59 or, In the
Alternative, Motion to Reconsider, Vigo
County Superior Court, *In re the
Marriage of Melissa Ann Lilly and Seth
Adam Lilly*,
No. 84D02-2206-DC-003750
(Oct. 11, 2023) App-172

Appendix K

Order on Motion to Clarify, Vigo County
Superior Court, *In re the Marriage of
Melissa Ann Lilly and Seth Adam Lilly*,
No. 84D02-2206-DC-003750
(Oct. 18, 2023) App-178

Appendix L

Order on Father's Motion to Correct Error,
Vigo County Superior Court, *In re the*

<i>Marriage of Melissa Ann Lilly and Seth Adam Lilly,</i> No. 84D02-2206-DC-003750 (Oct. 18, 2023)	App-181
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Appendix M

Order [limited grants to motions to correct errors of both parties], Vigo County Superior Court, <i>In re the Marriage of Melissa Ann Lilly and Seth Adam Lilly,</i> No. 84D02-2206-DC-003750 (Feb. 2, 2023)	App-184
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Appendix N

Petition To Transfer, Indiana Court of Appeals, <i>Seth Adam Lilly v. Melissa Ann Lilly,</i> No. 24a-Dc-00510 (Jun. 26, 2024)	App-206
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Appendix O

Email from John Claussen to Caitlin Miller, (July 31, 2023)	App-225
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TABLE OF AUTHORITIES

Cases

<i>Allied Structural Steel Co. v. Spannaus</i> , 438 U.S. 234 (1978).....	10
<i>Ankenbrandt v. Richards</i> , 504 U.S. 689 (1992).....	7
<i>Barber v. Barber</i> , 62 U.S. 582 (1858).....	7
<i>Campbell v. Campbell</i> , 250 N.E.3d 459 (Ind. Ct. App. 2024)	8
<i>Cardinale v. Louisiana</i> , 394 U.S. 437 (1969).....	6, 7
<i>Charles v. Baesler</i> , 910 F.2d 1349 (CA6 1990)	12
<i>Coleman v. Thompson</i> , 501 U.S. 722 (1991).....	11, 12, 13
<i>DIRECTV, Inc. v. Imburgia</i> , 577 U.S. 47 (2015).....	8
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983).....	6
<i>Indiana ex rel. Anderson v. Brand</i> , 303 U.S. 95 (1938).....	10

<i>Lujan v. G & G Fire Sprinklers, Inc.</i> , 532 U.S. 189 (2001).....	8
<i>O’Berry v. Wainwright</i> , 546 F.2d 1204 (CA5 1977)	13, 14
<i>Ogden v. Saunders</i> , 25 U.S. 213 (1827).....	8
<i>Schmidt v. Foster</i> , 911 F.3d 469 (CA7 2018)	12
<i>Sveen v. Melin</i> , 584 U.S. 811 (2018).....	10, 11
Constitutional Provisions and Rules	
U.S. Const., Amdt. XIV, § 1	8
S. Ct. R. 10.....	8
Treatises	
16B AM. JUR. 2D CONSTITUTIONAL LAW § 754	14

INTRODUCTION

This case presents a straightforward state-law contract dispute that Petitioner Seth Adam Lilly (“Husband”) attempts to recast as a federal constitutional violation. The Indiana courts provided Husband with a full and fair opportunity to litigate the meaning of the parties’ divorce settlement agreement. His disagreement with the state courts’ interpretation of that private agreement does not create a federal question under the Due Process Clause or the Contract Clause.

Husband’s Petition for Writ of Certiorari (“Petition”) should be denied. First, this Court lacks jurisdiction because Husband failed to raise his federal constitutional claims before the Indiana Supreme Court, thereby failing to preserve them for this Court’s review.

Second, Husband’s “constitutional” claims fail because they are simply repackaged state-law contract arguments. The Due Process Clause is satisfied by the extensive process he received: a multi-day evidentiary hearing and two full levels of state appellate review. His Contract Clause argument is misplaced because that clause restricts legislative acts, not judicial decisions. Husband contends the Indiana courts rewrote his contract, but they merely exercised their sound equitable discretion to interpret the Agreement and enforce its primary purpose after both parties failed to strictly comply with its procedural terms.

Third, Husband’s challenge to the Indiana Court of Appeals’ application of a state law standard

of review presents no federal question. The Court of Appeals' review of the trial court's order for an abuse of discretion rests on independent and adequate state grounds completely unrelated to federal law. Husband's argument that the Court of Appeals should have applied *de novo* review is unavailing, because he waived the point by repeatedly framing his own appeal under the very abuse-of-discretion standard he now contests. The Indiana Supreme Court unanimously agreed that there was no reason to question the Indiana Court of Appeals' use of the abuse of discretion standard of review, and so should this Court.

Finally, this case falls well within the category of domestic relations disputes that this Court has long left to the discretion of state courts. State courts are, for many reasons, uniquely positioned to resolve family law disputes. Husband's effort to dress his state contract claims in federal constitutional clothing does not create the substantial federal question needed for this Court's review.

For these reasons, Husband's Petition for a Writ of Certiorari should be denied.

STATEMENT OF THE CASE

Husband and Respondent Melissa Ann Lilly ("Wife") divorced in January 2023. Pet.App.2b. Their divorce was resolved by a mediated settlement agreement ("Agreement"), which included terms distributing the marital property. *Id.* The Agreement awarded Wife the marital residence and required her to "assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within

six (6) months.” Resp.App.88. If Wife was unable to meet this deadline, the Agreement provided a two-step process to sell the home. First, “upon Husband’s request, the property shall be placed immediately for sale and sold.”

Second, if the property was sold, “Husband shall have the right of first refusal to purchase the property at fair market value.” *Id.* The Agreement also required Husband to “cooperate with any attempts to refinance, assume or sell the marital residence.” *Id.*

The six-month deadline for Wife to obtain refinancing was July 24, 2023. Resp.App.88. On July 21, 2023, Wife’s counsel emailed Husband’s counsel to advise that Wife “has obtained the financing for the residence.” Pet.App.5b. Later, on July 31, 2023, Husband’s counsel sent an email asking “[h]as [Wife] been able to obtain financing?” App.25 The email continued, “[Husband] would like to purchase the marital residence for the appraisal amount.” *Id.*

On August 28, 2023, Wife filed a verified petition for rule to show cause alleging that she had obtained the necessary financing within the six-month timeframe, but Husband was refusing to execute the documents required to remove him from the mortgage. Resp.App.110-112. Two days later, on August 30, 2023, Husband filed his own verified petition for rule to show cause, in which he argued that Wife had failed to obtain refinancing within the deadline set forth in the Agreement. Resp.App.113-116.

The trial court conducted a two-day hearing in late August 2023. Resp.App.122-161. During the hearing, Wife testified that the refinancing could not

be finalized until Husband signed the necessary documents, including a quitclaim deed, which he had refused to do. Pet.App.7b. When the court asked Husband if he would sign the documents, he replied, “She didn’t get financing within the one hundred eighty [] days, so no, I’m not going to sign it.” Pet.App.8b.

On September 8, 2023, the trial court issued its main order granting Wife’s petition for rule to show cause. Resp.App.122-161. In interpreting the plain language of the Agreement, the court found that if Wife failed to refinance, Husband’s right was to first request that the property be placed for sale, after which he would have a right of first refusal at fair market value. Resp.App.126. The court found “no evidence that [Husband] ever requested that the house be placed for sale.” The court distinguished Husband’s email mentioning the “appraisal amount” from the contract’s requirement of “fair market value.” *Id.* The court also noted that Husband had purchased a new home for himself in April 2023 and that his attempt to block the refinance would prevent the children from remaining in their home. *Id.* In a later order, the trial court awarded Wife \$23,053.23 in attorney’s fees. Resp.App.192. The court found the fees “were incurred due to [Husband’s] behavior and actions/inactions.” *Id.* Notably, Husband’s Petition to this Court references only the \$10,000 appellate fee award, and incorrectly claims that it was punishment for “attempting to enforce” his rights. Pet. at 13.

Husband appealed to the Court of Appeals of Indiana. Pet.App.13b. In his appeal, Husband attempted to recast his “I want to buy it” email as an

implicit sale request. Resp.App.22. The trial court had rejected that argument, and the Court of Appeals did as well. In its unpublished memorandum decision, the Court of Appeals agreed with Husband that Wife “did not timely obtain refinancing.” Pet.App.13b. But, according to the Court of Appeals, that finding did not end the matter; it simply triggered the contract’s next clause. Under the Agreement’s plain text, Husband’s remedy for Wife’s non-completion by the 180th day was limited and conditional: he had to request that the house be “immediately placed for sale,” and only then would he hold a right of first refusal at fair-market value. He did neither. The Court of Appeals held that Husband’s email saying he “would like to purchase ... for the appraisal amount” was not a request to list the property, and it demanded a price term (appraised value) the contract does not provide. On that ground alone, the panel affirmed the trial court’s interpretation of the settlement agreement. The Indiana Court of Appeals’ decision closed by affirming the trial court’s fee award to Wife based in large part on Husband’s conduct that generated unnecessary litigation post-decree.

Husband next sought discretionary review from the Indiana Supreme Court. Resp.App.207. In his petition to transfer to the Indiana Supreme Court, he argued that the Court of Appeals had “sanctioned a significant departure from accepted law” by improperly adding terms to the settlement agreement. Resp.App.213. His petition raised no federal constitutional claims. On April 9, 2025, the Indiana Supreme Court denied Husband’s petition to transfer, with all justices concurring. Pet.App.1a.

Undeterred, Husband then filed his Petition for a Writ of Certiorari. Husband's Petition argues for the first time that the state courts' refusal to agree with his particular, self-serving interpretation of the settlement agreement infringed his rights to due process under the Fourteenth Amendment and the Contract Clause.

REASONS FOR DENYING THE PETITION

I. The Petition Should Be Denied Because Husband Failed to Preserve His Federal Claims in State Court

This Court does not ordinarily decide federal questions that were not "pressed or passed upon below." *Illinois v. Gates*, 462 U.S. 213, 217 (1983). A litigant who wishes to preserve a federal question for this Court's review must raise it in the state courts at the time and in the manner required by state procedure. *See Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (in the context of a habeas petition, holding that the Supreme Court will not decide federal constitutional issues raised before it for the first time on review of state court decisions).

Husband's petition for transfer to the Indiana Supreme Court, the final state court to which he could appeal, argued only that the lower court misapplied state contract law by allegedly adding terms to the agreement. Resp.App.207. It made no mention of the Due Process Clause, the Contract Clause, or any other provision of the U.S. Constitution. Having failed to present his federal constitutional arguments to the state's highest court,

Husband has waived them, and this Court should decline to consider them for the first time. This jurisdictional bar alone is sufficient reason to deny the Petition. *See Cardinale*, 394 U.S. 437 at 438.

II. The Petition Should Be Denied because It Involves a Routine State-Law Contract Dispute that Raises No Substantial Federal Question

This Court has long recognized a policy of non-interference in domestic relations matters. Over 160 years ago, the Court stated, “We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony[.]” *Barber v. Barber*, 62 U.S. 582, 584 (1858). While the Court has since clarified that the exception is a matter of statutory construction, not a constitutional command, it has made a point of reaffirming its validity as it pertains to the issuance of divorce, alimony, and child custody decrees. *Ankenbrandt v. Richards*, 504 U.S. 689, 700-04 (1992).

This principle is rooted in “sound policy considerations.” *Id.* at 703. State courts are “more eminently suited” to handle family law matters because they have developed a “special proficiency” in the field and possess the necessary infrastructure to monitor compliance with their decrees. *Id.* at 703-04. The core of the doctrine is the Court’s respect for the expertise of state courts and the principle that family law is a uniquely local concern. *See id.*

No matter how Husband tries to frame it, this case is nothing more than a disagreement over the

meaning of a single clause in a divorce settlement agreement, a matter firmly within the province of Indiana's courts. The Petition does not present a compelling federal question; it asks this Court to act as a court of last resort for correction of an unfavorable result. A petitioner's disagreement with a state court's reading of his divorce settlement agreement is not a basis for this Court's review. This Court grants certiorari "only for compelling reasons," which are absent here. S. Ct. R. 10.

It is well settled under Indiana law that settlement agreements are contracts, and their interpretation is a matter of state law. *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 54 (2015) ("the interpretation of a contract is ordinarily a matter of state law to which we defer[.]"); *Ogden v. Saunders*, 25 U.S. 213, 308 (1827) ("the regulation of contracts must remain with the States, and be governed by their laws respectively[.]"); *Campbell v. Campbell*, 250 N.E.3d 459, 472 (Ind. Ct. App. 2024) (noting that settlement agreements should be interpreted under the same principles as any other contract). The Fourteenth Amendment's Due Process Clause does not function as a guarantee of any particular substantive outcome in a state contract dispute. U.S. Const., Amdt. XIV, § 1. Instead, it requires that a state provide an adequate judicial process for resolving such claims. *Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 197 (2001). Husband's attempt to elevate a straightforward contract interpretation dispute into a federal constitutional crisis is meritless.

The Indiana Courts did not deprive Husband of property without due process; they interpreted

(unanimously so) the contractual path he had to follow to exercise his contractual rights. Husband presented evidence at a multi-day evidentiary hearing in the trial court and submitted appeals to both the Indiana Court of Appeals and the Indiana Supreme Court. Resp.App.69-75 and 77-83. This is the very definition of due process, not a violation of it. Husband's argument appears to be that due process is violated whenever a state court interprets a contract in a way a litigant dislikes.

The Indiana Court of Appeals carefully parsed the plain language of the Settlement Agreement. Pet.App.14b. The agreement laid out a clear sequence: (1) if Wife failed to refinance the residence within six months, then (2) Husband could "request" that "the property shall be placed immediately for sale," and (3) if the property was sold, he would have a "right of first refusal to purchase the property at fair market value." Resp.App.88. The trial court found, and the Court of Appeals agreed, that Husband never made the contractually required "request" that the property be "placed immediately for sale." Pet.App.14b. (The Petition, for its part, puts quotation marks around its own inaccurate paraphrase of this holding. Pet. at 7). Instead, his counsel sent an email expressing an interest in "purchas[ing] the marital residence for the appraisal amount." Resp.App.1d. Like the trial court, the Indiana Court of Appeals determined this was neither a request to place the home for sale nor an offer to purchase at "fair market value," as the Agreement specified. Pet.App.14b. Both courts simply enforced the specific terms Husband himself had negotiated but failed to follow.

Husband's Contract Clause argument is misplaced for two independent reasons. First, the Clause's prohibition applies only when a state "pass[es] any ... Law impairing the Obligation of Contracts." *Sveen v. Melin*, 584 U.S. 811, 818 (2018). Husband challenges no Indiana legislation. He challenges only a judicial decision. A judicial interpretation of a contract is not the kind of restrictive legislative act the Contract Clause was designed to prevent. *See, e.g., Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978) (invalidating a state statute imposing new pension obligations); *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95 (1938) (invalidating a statute repealing teacher tenure).

Second, even if a judicial decision could be subject to a Contract Clause challenge, the Indiana courts' actions did not create a "substantial impairment" of the parties' contractual relationship. *Sveen*, 584 U.S. at 819. This Court's test for substantial impairment considers whether the state action undermines the bargain, interferes with reasonable expectations, and prevents a party from safeguarding his rights. *Id.* None of those factors are present here. The core purpose of the clause at issue was to "remove Husband from the mortgage and note obligations." Resp.App.88. The trial court's order achieved that exact purpose by appointing a commissioner to make sure the refinancing closed without further delay. Resp.App.120-128. The court's action did not rewrite the contract; it enforced its primary objective when the procedural steps failed due to the parties' mutual non-compliance. Nor did the ruling interfere with Husband's reasonable expectations. As this Court noted in *Sveen*, the power

of courts to interpret and enforce agreements must shape the parties' expectations from the outset. 584 U.S. at 821-22. Husband could not reasonably expect his preferred interpretation of a contract to be immune from judicial review.

Most importantly, Husband was not prevented from protecting his rights. The Second Circuit has recognized that where a state provides a judicial "remedy in damages," there has been no unconstitutional impairment, only a potential breach of contract that the state courts can adjudicate. *Donohue v. Cuomo*, 980 F.3d 53, 81 (CA2 2020). Here, Husband had a remedy: he filed a petition for rule to show cause to enforce the agreement. Resp.App.113-116. The state courts heard his claim and concluded that, under the Agreement's plain terms, it was Wife, not he, who was entitled to relief. Pet.App.14b. His dissatisfaction with that outcome does not create a federal constitutional violation.

III. The Indiana Courts' Application of a State-Law Standard of Review, Which Petitioner Himself Advanced, Presents No Federal Question For This Court

The Petition also asks this Court to second-guess the Indiana Court of Appeals' use of a state-law standard of review, the very standard Petitioner repeatedly urged the court to apply. This Court does not sit to correct alleged errors of state procedural law, especially those a party invited. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)

Whether an Indiana appellate court should have reviewed a trial court's contract interpretation

de novo instead of for an abuse of discretion is a garden-variety question of state law and procedure. It presents no federal question. Even if it did, Petitioner waived the argument by repeatedly framing his own appeal under the same “abuse of discretion” standard he now attacks. The Indiana Supreme Court’s unanimous and cursory denial of transfer signals that no state-law error occurred, let alone one that rises to the level of a federal constitutional violation.

A. The foundational doctrine of an independent and adequate state ground bars federal courts from reviewing federal questions decided by a state court if the state court’s judgment rests on a state-law ground that is independent of the federal question and adequate to support the judgment. *Coleman*, 501 U.S. at 729. This rule is grounded in the Court’s respect for the independence of state courts and its need to avoid issuing advisory opinions. *Id.* at 729-31.

Federal courts do not act as “super-appellate courts” to correct errors of pure state law. *Schmidt v. Foster*, 911 F.3d 469, 477 (CA7 2018). The standard for federal intervention in a state court’s adjudication is “difficult to meet” and requires a state court decision that is “so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Id.* at 477-78. This extends with even greater force to a state court’s interpretation and application of its own procedural rules and standards of review. *See Charles v. Baesler*, 910 F.2d 1349, 1352 (CA6 1990) (stating that it will not “disturb the reasoned conclusions of the

experienced Kentucky district judge” on certain state-law issues). A state court’s choice of its own review standard is exactly the kind of independent state-law ground that this Court does not review. *See O’Berry v. Wainwright*, 546 F.2d 1204, 1217-18 (CA5 1977) (holding that federal review is precluded where a state court resolves a claim on an independent state procedural ground).

B. Moreover, Petitioner waived any challenge to the standard of review. Petitioner cannot now complain that the Indiana Court of Appeals applied an “abuse of discretion” standard, because he repeatedly argued for that very standard in his own brief to that court. Resp.App.4a, 9a-10a. His lead argument was framed under the heading: “The trial court abused its discretion when it granted Wife’s Petition for Rule to Show Cause and denied Husband’s Petition for Rule to Show Cause[.]” Resp. App. 10a. His argument challenging the award of attorney’s fees likewise asserted that the trial court abused its discretion. Resp.App.23-27. While Petitioner included a single, isolated sentence in his standard of review section asserting that contract interpretation is reviewed *de novo*, the primary substance of his appeal was a request for the Indiana Court of Appeals to find that the trial court abused its discretion in interpreting the settlement agreement. Resp.App.12-13. A party cannot ask a state court to decide a case using one standard and then, after losing, petition this Court claiming the use of that standard was a federal constitutional error. *See Coleman*, 501 U.S. at 729 (“This Court will not review a question of federal law decided by a state court if the decision of that court rests on a

state law ground that is independent of the federal question and adequate to support the judgment.”).

C. Petitioner’s attempt to frame this state procedural issue as a violation of federal due process or the Contract Clause is unavailing. Pet. at 8, 12. As noted above, the state courts provided Petitioner with a full and fair opportunity to litigate his contract claims, including a two-day evidentiary hearing and two levels of appeal. Resp. App. 18b-19b. The application of a deferential, rather than plenary, standard of appellate review does not deprive a litigant of notice, a meaningful opportunity to be heard, or fundamental fairness. *See O’Berry*, 546 F.2d at 1217-18. Likewise, the Contract Clause, which restricts states from passing laws that impair contractual arrangements, has no application to a state court’s adjudication of a disagreement regarding the proper interpretation of the terms of an existing contract, the validity of which is not in question. *See* 16B AM. JUR. 2D CONSTITUTIONAL LAW § 754 (stating that the Contract Clause generally applies only to state legislation, not to state judicial decisions, however erroneous they may be). Importantly, the Indiana Supreme Court, the final arbiter of Indiana law, had the opportunity to review the Court of Appeals’ memorandum decision; it denied transfer, with all justices concurring. Pet.App.A. If the state’s highest court saw no significant error in the Court of Appeals’ opinion, including its application of the standard of review, there is certainly no compelling reason for this Court to intervene.

Ultimately, this case is a private dispute between former spouses over a marital home in Vigo

County, Indiana. It was properly and fully resolved by three levels of the Indiana state courts. Husband's disagreement with that result does not transform the dispute into a federal one. Granting certiorari would only signal a willingness to become a court of last resort for ordinary state contract disputes, a role this Court has understandably never been willing to adopt. The Petition presents no novel or unresolved question of federal law, nor any significant question of state law with any implications beyond this specific case or these specific parties. It does not ask the Court to resolve a split among the circuits, nor does it challenge a state law of broad applicability. It is a private dispute, conclusively resolved under settled state law, that began and should end in the Indiana courts.

CONCLUSION

This Court should deny certiorari.

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No. 25-38

In the Supreme Court of the United States

SETH ADAM LILLY,
Petitioner,

v.

MELISSA ANN LILLY,
Respondent.

CERTIFICATE OF SERVICE

Pursuant to S. Ct. R. 29.2, I certify that 40 copies in booklet format of the petition for a writ of certiorari, the accompanying appendices, are sent to the Clerk of the United States Supreme Court through the United States Postal Service via Ground Advantage postage prepaid, and was picked up by the United States Postal Service on this 26th day of September, 2025.

Lastly, I certify pursuant to S. Ct. R. 29.5(c), 3 copies of the petition for a writ of certiorari and the accompanying appendices are served upon the Michael James Confusione, HEGGE & CONFUSIONE, counsel of record for petitioner Seth Adam Lilly, at P.O. Box 366, Mullica, NJ 08062 on this 26th day of September, 2025 through the United States Postal Service via Ground Advantage postage prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2025

A handwritten signature in blue ink, consisting of three stylized Chinese characters: 戈 (Gē), 天 (Tiān), and 黄 (Huáng).

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